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Principal abbreviations

AA	Vatican II, Decree on the Apostolate of Lay People, *Apostolicam actuositatem*, November 18, 1965, *AAS* 59 (1966) 837–864
AAS	*Acta Apostolicae Sedis: commentarium officiale*
AG	Vatican II, Decree on the Church's Missionary Activity, *Ad gentes*, December 7, 1965, *AAS* 58 (1966) 947–990
AIE	Sacred Congregation for Religious and Secular Institutes, Decree *Ad instituenda experimenta*, June 4, 1970, *AAS* 62 (1970) 549–550
AkK	*Archiv für katholisches Kirchenrecht*, Mainz, 1857–
Alloc.	Allocution
AP	Apostolic Penitentiary
AP	Paul VI, motu propio *Ad pascendum*, August 15, 1972, *AAS* 64 (1972) 534–540
Ap.	Apostolic
Ap. Const.	Apostolic Constitution
Ap. Exhort.	Apostolic Exhortation
art. / arts.	article / articles
AS	Paul VI, motu proprio *Apostolica sollicitudo*, September 15, 1965, *AAS* 57 (1965) 775–780
BB	*Benedicti Papae XIV Bullarium*, Venice 1768
Bk.	Book
BM	*Bibliographia missionaria*
BOCEE	*Boletín Oficial de la Conferencia Episcopal española*
BOEE	*Boletín Oficial del Estado español*
BRC	*Bullarii Romani Continuatio, Romae 1835–1855*
C	*Causa (Decreti pars secunda)*
c. / cc.	canon / canons
CA	Pius XII, motu proprio *Crebrae allatae*, February 22, 1949, *AAS* 31 (1949) 89–117
CAd	Secretariat of State, Rescript *Cum admotae*, November 6, 1964, *AAS* 59 (1967) 374–378

CAn	JOHN PAUL II, Encyclical *Centesimus annus*, May 1, 1991, *AAS* 83 (1991) 793–867
CB	Congregation for bishops
CBA	Conference of bishops of Argentina
CBF	Conference of bishops of France
CBI	Conference of bishops of Italy
CBM	Conference of bishops of Mexico
CBP	Conference of bishops of Portugal
CBS	Conference of bishops of Spain
CC	Congregation for the Clergy
CC	PIUS XI, Encyclical *Casti connubii*, December 31, 1930, *AAS* 22 (1930) 539–592
CCC	*Catechism of the Catholic Church*, Canadian Conference of Catholic bishops, Ottawa, 2000
CCCL	Central Commission for the Coordination of the Work of the Council and for Interpreting the Conciliar Decrees
CCE	Congregation for Catholic Education
CCEO	*Codex canonum Ecclesiarum orientalium*, 1990
CCh	*Corpus Christianorum*: SL (Series Latina), SG (Series Graeca). Turnhout-Paris 1953 ss.
CCS	Congregation for the Causes of Saints
CD	VATICAN II, Decree on the Pastoral Office of bishops in the Church, *Christus Dominus*, October 28, 1965, *AAS* 58 (1966) 673–696
CDF	Congregation for the Doctrine of the Faith
CDRC	Commission for the Discipline of the Roman Curia
CDWDS	Congregation for Divine Worship and the Discipline of the Sacraments
CE	PAUL VI, motu proprio *Catholica Ecclesia*, October 23, 1976, *AAS* 68 (1976) 694–696
CEC	Congregation for the Eastern Churches
CEP	Congregation for the Evangelization of Peoples
cf.	confer
ch.	chapter
CIC	*Codex iuris canonici*, 1983
CIC/1917	*Codex iuris canonici*, 1917
CICLSAL	Congregation for Institutes of Consecrated Life and Societies of Apostolic Life
CICSL	Consilium for the Implementation of the Constitution on the Sacred Liturgy
CL	JOHN PAUL II, Apostolic Exhortation *Christifideles laici*, December 30, 1988, *AAS* 81 (1989) 393–521
Clem.	*Clementinae*

CM	PAUL VI, motu proprio *Causas matrimoniales*, March 28, 1971, *AAS* 63 (1971) 441–446
CMat	PAUL VI, motu proprio *Cum matrimonialium*, September 8, 1973, *AAS* 65 (1973) 577–581
CodCom	Pontifical Commission for the Authentic Interpretation of the Canons of the Code of Canon Law
col. / cols.	column / columns
Collectanea	*Collectanea S. Congregationis de Propaganda Fide*, Romae 1907
Comm	Communicationes
Communionis notio	CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Letters to the bishops of the Catholic Church about Certain Aspects of the Church as Communion*, May 28, 1992, *AAS* 85 (1993) 838–850
Comp. I (II ...)	*Compilatio prima* (*secunda*, etc.)
Congr.	Congregation
Const.	Constitution
CPAC	Council for the Public Affairs of the Church
CS	PAUL VI, motu proprio *Cleri sanctitati*, June 2, 1957, *AAS* 49 (1957) 433–600
CSan	SACRED CONGREGATION FOR RELIGIOUS, Instruction *Cum Sanctissimus*, March 19, 1948, *AAS* 40 (1948) 293–297
CSEL	*Corpus scriptorum ecclesiasticorum latinorum*, Viena 1866 ss.
CT	JOHN PAUL II, Apostolic Exhortation *Catechesi tradendae*, October 16, 1979, *AAS* 71 (1979) 1277–1340
D.	*Distinctio (Decreti pars prima; De poen.; De cons.)*
DCV	*Documenta inde a Concilio Vaticano II expleto edita* (1966–1985), Vatican City 1985
De poen.	*Tractatus de poenitentia* (C. 33, q. 3)
De cons.	*De consecratione (Decreti pars tertia)*
DE	*Il Diritto ecclesiastico*
DE/1967	SECRETARIAT FOR PROMOTING CHRISTIAN UNITY, *Ecumenical Directory*, I: May 14, 1967, *AAS* 59 (1967) 574–592; II: April 16, 1970, *AAS* 62 (1970) 705–724
DE/1993	PONTIFICAL COUNCIL FOR PROMOTING CHRISTIAN UNITY, *Directory for the Application of the Principles and Norms on Ecumenism*, March 23, 1993, *AAS* 85 (1993) 1039–1119
Decl.	Declaration
Decr.	Decree
DH	VATICAN II, Declaration on Religious Liberty, *Dignitatis humanae*, December 7, 1965, *AAS* 58 (1966) 929–946
DI	*Dilexit iustitiam*, Vatican City 1984
dict. p. c.	Dictum Gratiani post capitulum
Dir.	Directory

DPM	JOHN PAUL II, Apostolic Constitution *Divinus perfectionis Magister*, January 25, 1983, *AAS* 75 (1983) 349–355
DPMB	SACRED CONGREGATION FOR BISHOPS, *Directory on the Pastoral Ministry of bishops* (*Ecclesiae imago*), February 22, 1973, Typis polyglottis Vaticanis 1973
DR	PIUS XI, Encyclical *Divini Redemptoris*, March 19, 1937, *AAS* 29 (1937) 65–106
DSD	PIUS XI, Apostolic Constitution *Deus scientiarum Dominus*, May 24, 1931, *AAS* 23 (1931) 241–262
DV	VATICAN II, Dogmatic Constitution on Divine Revelation, *Dei Verbum*, November 18, 1965, *AAS* 58 (1966) 817–835
Dz.-Sch	DENZINGER-SCHÖNMETZER, *Enchiridion Symbolorum, Definitionum et Declarationum de rebus fidei et morum*, ed. 33.ª, 1965
EcS	PAUL VI, Encyclical *Ecclesiam Suam*, August 6, 1964, *AAS* 56 (1964) 609–659
EDIL	*Enchiridion Documentorum Instaurationis Liturgicae* (R. Kaczynski, ed.), Torino-Roma 1976–1993
EFH	*Enchiridion fontium historiae ecclesiasticae antiquae* (C. Kirch, ed.)
EIC	Ephemerides iuris canonici
EM	PAUL VI, motu proprio *De Episcoporum muneribus*, June 15, 1966, *AAS* 58 (1966) 467–472
EMys	SACRED CONGREGATION FOR RITES, Instruction *Eucharisticum mysterium*, May 25, 1967, *AAS* 59 (1967) 539–573
EN	PAUL VI, Apostolic Exhortation *Evangelii nuntiandi*, December 8, 1975, *AAS* 68 (1976) 5–76
Enc.	Encyclical
EP	SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Decree *Ecclesiae Pastorum*, March 19, 1975, *AAS* 67 (1975) 281–284
ES	PAUL VI, motu proprio *Ecclesiae sanctae*, August 6, 1966, *AAS* 58 (1966) 757–787
ET	PAUL VI, Apostolic Exhortation *Evangelica testificatio*, June 29, 1971, *AAS* 63 (1971) 497–526
EV	*Enchiridion Vaticanum*. Edizioni Dehoniane, Bologna 1966–2001
Exhort.	Exhortation
Extrav. com.	*Extravagantes communes*
Extrav. Io. XXII	*Extravagantes Ioannis XXII*
FC	JOHN PAUL II, Apostolic Exhortation *Familiaris consortio*, November 22, 1981, *AAS* 74 (1982) 81–191
ff	following
Fontes	P. GASPARRI AND A. SERÉDI, eds., *Codicis Iuris Canonici Fontes*, Rome 1923–1939

GCD	SACRED CONGREGATION FOR CLERGY, *General Catechetical Directory*, April 11, 1971, *AAS* 64 (1972) 97–176
GE	VATICAN II, Declaration on Christian Education, *Gravissimum educationis*, October 28, 1965, *AAS* 58 (1966) 728–739
gen.	general
GER	*Generale Ecclesiae Rationarium*, June 28, 1988
GILH	General Instruction of the Liturgy of the Hours
GIRM (1970)	General Instruction of the Roman Missal, March 26, 1970
GIRM (2000)	General Instruction of the Roman Missal, Canadian Conference of Catholic bishops, Ottawa
gl.	*glossa*
Glos. ord.	*Glossa ordinaria*
GS	VATICAN II, Pastoral Constitution on the Church in the Modern World, *Gaudium et spes*, December 7, 1965, *AAS* 58 (1966) 1025–1115
HCW	Rite of Holy Communion and Worship of the Eucharistic Mystery Outside Mass
Hom.	Homily
HV	PAUL VI, Encyclical *Humanae vitae*, July 25, 1968, *AAS* 60 (1968) 481–503
IC	SACRED CONGREGATION FOR THE DISCIPLINE OF THE SACRAMENTS, Instruction *Immensae caritatis*, January 29, 1973, AAS 65 (1973) 264–271
ICL	Institute of consecrated life
ID	SACRED CONGREGATION FOR SACRAMENTS AND DIVINE WORSHIP, INSTRUCTION *Inaestimabile donum*, April 3, 1980, AAS 72 (1980) 331–343
IE	*Ius Ecclesiae*
IM	VATICAN II, Decree on the Means of Social Communication, *Inter mirifica*, December 4, 1963, *AAS* 56 (1964) 145–157
Ind.	Indult
Instr.	Instruction
IOe	SACRED CONGREGATION FOR RITES, Instruction *Inter Oecumenici*, September 26, 1964, *AAS* 56 (1964) 877–900
ITC	International Theological Commission
l.s.	*Latae sententiae*
LE	*Leges Ecclesiae post Codicem iuris canonici editae* (X. Ochoa, ed.), Rome 1966–1994
LEF	*Lex Ecclesiae fundamentalis*
Let.	Letter (*epistula*)
LG	VATICAN II, Dogmatic Constitution on the Church, *Lumen gentium*, November 21, 1964, *AAS* 57 (1965) 5–75
Litt.	Letter (*litterae*)

LMR	SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, *Life and Mission of Religious in the Church* (Plenaria of SCRSI), August 20, 1980
MBR	*Magnum Bullarium Romanum*, Graz 1964–1966
MC	PIUS XII, Encyclical *Mystici Corporis*, June 29, 1943, *AAS* 35 (1943) 193–248
MD	PIUS XII, Encyclical *Mediator Dei*, November 20, 1947, *AAS* 39 (1947) 521–600
ME	Monitor ecclesiasticus
MeM	JOHN XXIII, Encyclical *Mater et Magistra* May 15, 1961, *AAS* 53 (1961) 401–464
MF	PAUL VI, Encyclical *Mysterium fidei*, September 3, 1965, *AAS* 57 (1965) 753–774
MG	PAUL VI, Allocution *Magno gaudio*, May 23, 1964, *AAS* 56 (1964) 565–571
MM	PAUL. VI, motu proprio *Matrimonia mixta*, March 31, 1970, *AAS* 62 (1970) 257–263
MP/mp	*Motu proprio*
MQ	PAUL VI, motu proprio *Ministeria quaedam*, August 15, 1972, *AAS* 64 (1972) 529–534
MR	SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES AND SACRED CONGREGATION FOR BISHOPS, Directive Notes *Mutuae relationes*, May 14, 1978, *AAS* 70 (1978) 473–506
MS	SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction *Matrimonii sacramentum*, March 18, 1966, *AAS* 58 (1966) 235–239
NAE	VATICAN II, Declaration on the Relation of the Church to Non-Christian Religions, *Nostra aetate*, October 28, 1965, *AAS* 58 (1966) 740–744
no. / nos.	number / numbers
Notif.	Notification
NPCEM	COUNCIL FOR THE PUBLIC AFFAIRS OF THE CHURCH, *Norms for the Promotion of Candidates to the Episcopal Ministry in the Latin Church*, March 25, 1972, *AAS* 64 (1972) 386-391
NSRR	*Norms of the Tribunal of the Sacred Roman Rota*: (1934) June 29, 1934, *AAS* 26 (1934) 449–491 (1969) May 27, 1969, Typis polyglottis Vaticanis 1969 (1982) January 16, 1982, *AAS* 74 (1982) 490–517
OChr	SACRED CONGREGATION FOR CLERGY, Circular Letter *Omnes christifideles*, January 25, 1973
OE	VATICAN II, Decree on the Eastern Catholic Churches, *Orientalium Ecclesiarum*, November 21, 1964, *AAS* 57 (1965) 76–89
OR	*L'Osservatore romano*
Ord	Ordinary

OS (1966)	SECRETARY OF STATE, *Order of the Celebration of the Synod of bishops*, December 8, 1966, *AAS* 59 (1967) 91–103
OS (1969)	COUNCIL FOR THE PUBLIC AFFAIRS OF THE CHURCH, *Order of the Celebration of the Synod of bishops*, June 24, 1969, *AAS* 61 (1969) 525–539
OS (1971)	COUNCIL FOR THE PUBLIC AFFAIRS OF THE CHURCH, *Order of the Celebration of the Synod of bishops*, August 20, 1971, *AAS* 63 (1971) 702–704
OT	VATICAN II, Decree on the Training of Priests, *Optatum totius*, October 28, 1965, *AAS* 58 (1966) 713–727
PA	SACRED CONSISTORIAL CONGREGATION, Directive Notes *Postquam Apostoli*, March 25, 1980, *AAS* 72 (1980) 343–364
Paen	PAUL VI, Apostolic Constitution *Paenitemini*, February 17, 1966, *AAS* 58 (1966) 177–185
Pamplona Com	*Código de Derecho Canónico, bilingüe y anotada*, Pamplona, 5th ed. 1992; 6th ed. 2001; *Code of Canon Law Annoted*, 2nd ed., Montreal, 2004.
Part.	Particular
PB	JOHN PAUL II, Apostolic Constitution *Pastor bonus*, June 28, 1988, *AAS* 80 (1988) 841–912
PBC	Pontifical Biblical Commission
PC	VATICAN II, Decree on the Up-to-Date Renewal of Religious Life, *Perfectae caritatis*, October 28, 1965, *AAS* 58 (1966) 702–712
PCC	Pontifical Council for Culture
PCCICOR	Pontifical Commission for the Revision of the Eastern Code of Canon Law
PCCICR	Pontifical Commission for the Revision of the Code of Canon Law
PCCU	Pontifical Council *Cor unum*
PCDNB	Pontifical Council for Dialogue with Non-Believers
PCED	Pontifical Commission *Ecclesia Dei*
PCF	Pontifical Council for the Family
PCHW	Pontifical Council for Pastoral Assistance to Health Care Workers
PCID	Pontifical Council for Inter-religious Dialogue
PCIDSVC	Pontifical Commission for the Interpretation of the Decrees of the Second Vatican Council
PCILT	Pontifical Council for the Interpretation of Legislative Texts; now: Pontifical Council for Legislative Texts
PCJP	Pontifical Council for Justice and Peace
PCL	Pontifical Council for the Laity
PCPCMIP	Pontifical Council for the Pastoral Care of Migrants and Itinerant
PCPCU	Pontifical Council for Promoting Christian Unity

PCSC	Pontifical Council for Social Communications
PCSCM	Pontifical Council for Social Communications Media
PDV	JOHN PAUL II, Apostolic Exhortation *Pastores dabo vobis*, March 25, 1992, *AAS* 84 (1992) 657–804
pen	Preliminary explanatory note
Per	*De religiosis et missionariis supplementa et monumenta periodica*, 1–8 (1907–1919) *Periodica de re canonica et morali*, 9–15 (1921–1926) *Periodica de re morali, canonica, liturgica*, 16–79 (1927–1990) *Periodica de re canonica*, 80 (1991)
PF	PIUS XII, motu proprio *Primo feliciter*, March 12, 1948, *AAS* 40 (1948) 283–286
PG	*Patrologiae cursus completus*. Series graeca. (J.-P. Migne, ed.), Paris 1857–1886
PI	Instruction *Potissimum institutioni*, February 2, 1990, *AAS* 82 (1990) 472–532
PL	*Patrologiae cursus completus*. Series latina. (J.-P. Migne, ed.), Paris 1844–1864
PM	PAUL VI, motu proprio. *Pastorale Munus*, November 30, 1963, *AAS* 56 (1964) 5–12
PME	PIUS XII, Apostolic Constitution *Provida Mater Ecclesia*, February 2, 1947, *AAS* 39 (1947) 114–124
PO	VATICAN II, Decree on the Ministry and Life of Priests, *Presbyterorum ordinis*, December 7, 1965, *AAS* 58 (1966) 991–1024
Prae	Praenotanda
Principles	*Principles Governing the Revision of the Code of Canon Law*, *Communicationes* 1 (1969) 77–86
PrM	SACRED CONGREGATION FOR THE DISCIPLINE OF THE SACRAMENTS, Instruction *Provida Mater*, August 15, 1936, *AAS* 28 (1936) 313–361
PS	SACRED CONSISTORIAL CONGREGATION, Circular Letter *Presbyteri sacra*, April 11, 1970, *AAS* 62 (1970) 459–465
pt.	part
q.	question
QA	PIUS XI, Encyclical *Quadragessimo anno*, May 15, 1931, *AAS* 23 (1931) 177–228
QSR	Quaderni Studio rotale
RA	Rite of Anointing, December 7, 1972
RBaptC (1969)	Rite of Baptism of Children, June 10, 1969;
RBaptC (1973)	Rite of Baptism of Children, Ed. typica altera, August 29, 1973
RC	SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, Instruction *Renovationis causam*, January 6, 1969, *AAS* 61 (1969) 103–120

RCIA	Rite of Christian Initiation of Adults, January 1, 1972
RConf	Rite of Confirmation, August 22, 1971
RDCA	Rite of Dedication of a Church and an Altar, May 29, 1977
REDC	*Revista española de derecho canónico*
Rescr.	Rescript
Resol.	Resolution
Resp.	Response
REU	PAUL VI, Apostolic Constitution *Regimini Ecclesiae universae*, August 15, 1967, *AAS* 59 (1967) 885–928
RF	Rite of Funerals, August 15, 1969
RFIS	SACRED CONGREGATION FOR CATHOLIC EDUCATION, *Ratio fundamentalis institutionis sacerdotalis*, January 6, 1970, *AAS* 62 (1970) 321–384; Editio altera, March 19, 1985, Typis polyglottis Vaticanis 1985
RGCR	*Regolamento generale della Curia Romana*, February 4, 1992, *AAS* 84 (1992) 201–267
RH	JOHN PAUL II, Encyclical *Redemptor hominis*, March 4, 1979: *AAS* 71 (1979) 257–324
RM	JOHN PAUL II, Encyclical *Redemptoris Missio*, December 7, 1990, *AAS* 83 (1991) 249–340
RM (1969)	Rite of Marriage, March 19, 1969
RM (1990)	Rite of Marriage, March 19, 1990
RN	LEO XIII, Encyclical *Rerum novarum*, May 15, 1891, *Leonis XIII P.M. Acta*, XI, Rome 1892, 97–144
RomPont	Roman Pontifical
RP	Rite of Penance, December 2, 1973
RP	JOHN PAUL II, Apostolic Exhortation. *Reconciliatio et Paenitentia*, December 2, 1984, *AAS* 77 (1985) 185–275
RPE	PAUL VI, Apostolic Constitution *Romano Pontifici eligendo*, October 1, 1975, *AAS* 67 (1975) 609–645
RR	Roman Rota
rubr.	rubric
S. Cong.	Sacred Congregation
S. Th.	*Summa Theologica*
SAL	Society of Apostolic Life
Salamanca Com	*Código de Derecho Canónico, bilingüe comentada*, Salamanca, 11th ed. 1992
SAP	Sacred Apostolic Penitentiary
SapChr	JOHN PAUL II, Apostolic Constitution *Sapientia christiana*, April 15, 1979, *AAS* 71 (1979) 469–499
SArt	SACRED CONGREGATION FOR THE HOLY OFFICE, Instruction *Sacrae artis*, June 30, 1952, *AAS* 44 (1952) 542–546
SC	VATICAN II, Constitution on the Sacred Liturgy, *Sacrosanctum Concilium*, December 4, 1963, *AAS* 56 (1964) 97–138
SCB	Sacred Congregation for bishops

SCBR	Sacred Congregation for bishops and Regulars
SCC	Sacred Congregation for Clergy
SCCE	Sacred Congregation for Catholic Education
SCCong	Sacred Consistorial Congregation
SCCouncil	Sacred Congregation of the Council
SCCS	Sacred Congregation for the Causes of Saints
SCDF	Sacred Congregation for the Doctrine of the Faith
SCDS	Sacred Congregation for the Discipline of the Sacraments
SCDW	Sacred Congregation for Divine Worship
SCEC	Sacred Congregation for the Eastern Churches
SCEEA	Sacred Congregation for Extraordinary Ecclesiastical Affairs
SCEP	Sacred Congregation for the Evangelization of Peoples or for the Propagation of the Faith
SCHO	Sacred Congregation for the Holy Office
SCong	Sacred Congregation for Religious, Normae *Sacra Congregatio*, July 7, 1956
SCPF	Sacred Congregation for the Propagation of the Faith
SCR	Sacred Congregation for Religious
SCRit	Sacred Congregation for Rites
SCRSI	Sacred Congregation for Religious and Secular Institutes
SCSDW	Sacred Congregation for Sacraments and Divine Worship
SCSUS	Sacred Congregation for Seminaries and University Studies
SDL	John Paul II, Apostolic Constitution *Sacrae disciplinae leges*, January 25, 1983, *AAS* 75 (1983) pars II, VII–XIV
SDO	Paul VI, motu proprio *Sacrum diaconatus ordinem*, June 18, 1967, *AAS* 59 (1967) 697–704
Secr. St.	Secretariat of State
sect.	section
sess.	session
SFS	Congregation for Catholic Education, Circular Letter *Spiritual Formation in Seminaries*, January 6, 1980, *Leges ecclesiae*, 6, col. 7857–7867
Signatura	Supreme Tribunal of the Apostolic Signatura
SMC	John Paul II, Apostolic Constitution *Spirituali militum curae*, April 21, 1986, *AAS* 78 (1986) 481–486
SN	Pius XII, motu proprio *Sollicitudinem nostram*, January 6, 1950, *AAS* 42 (1950) 5–120
SNAS	*Special Norms to be Observed in the Supreme Tribunal of the Apostolic Signatura ad experimentum*, March 23, 1968
SNB	Secretariat for Non-Believers
SOE	Paul VI, motu proprio *Sollicitudo omnium Ecclesiarum*, June 24, 1969, *AAS* 61 (1969) 473–484

BOOK II
The people of God

PART I
Christ's Faithful

T. I. The Obligations and Rights of all Christ's Faithful
T. II. The Obligations and Rights of the Lay Members of Christ's Faithful
T. III. Sacred Ministers or Clerics
T. IV. Personal Prelatures
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PART II
The Hierarchical Constitution of the Church

Section I The Supreme Authority of the Church
Section II PArticular Churches and Their Groupings
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PART III
Institutes of Consecrated Life and Societies of Apostolic Life

Section I Institutes of Consecrated Life
T. I. Norms Common to All Institutes of Consecrated Life
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T. II. Secular Institutes
Section II Societies of Apostolic Life

INTRODUCTION

Juan Fornés

1. *Introduction*

The *CIC*, in closely following the doctrinal principles of the Second Vatican Council, has replaced book II, "De personis," of the *CIC*/1917 with that of "De populo Dei." The first was structured on a foundation of what

could be termed "canonical states or estates" (*status*), in such a way that its contents were divided into three parts: clergy, religious, and laity. For this reason, it can be said that a class-based vision prevailed—tightly linked to the customary focus of the doctrine of the period—which served to blur the radical equality intrinsic to the condition of the faithful.[1] On the other hand, book II of the *CIC* begins precisely with the fundamental concept of *christifideles*: as members of the people of God possessing a basic condition common to all. In other words, the people of God are endowed with a condition of radical equality originating in baptism, which is qualified by a distinction of functions stemming from their distinct participation in the common mission of the Church, according to personal vocation and the subjective juridical status. Canon 204 stresses that the Christian faithful "are called to exercise the mission which God has entrusted to the Church to fulfill in the world in accord with the condition proper to each one."

As a result, the key ideas which should be kept in mind are not to adopt the form of those ideas which would be conducive to maintaining a class-based vision of the Church. "Canonical states," consisting of a *class* of persons, a *rank*, is an incompatible concept with the condition of all the faithful without distinction, who possess certain fundamental rights and obligations, independent of whether they belong to one *status* or another. There are not two or three classes (types, states) of Christians. There is only one kind of Christian: the faithful.

Nevertheless, the basic concepts are: *a) faithful*, which is connected to the principal of equality (cf., e.g., cc. 204 and 208); *b) personal vocation*, which is connected to the principle of free choice (cf., e.g., cc. 226, 233, 385, 646, 722); *c)* the *sole mission* of the Church, which is also connected to the principle of equality (cf., e.g., cc. 204 § 1, 208, 210, 211, 216); *d)* the *distinction of functions*, which is connected to institutional or hierarchical principles and also to the diversity resulting from baptism itself (a response to different personal vocations and to the charisms of the Holy Spirit in its many forms (cf., e.g., cc. 204, 207, 208); *e)* and, finally, *subjective juridical status* (canonical status), that is, the imprint on personal life of the requirements which the performance of a specific function in the Church carries with it, and, as well, the circumstances which help determine and modify the capacity of a person to act (cf., e.g., cc. 96–112; 204; 273ff, specifically, c. 277 linked to c. 1087; cc. 285 § 3, 286, 287 § 1, 598ff, 662ff, 1134–1140; etc.) See also the commentary on c. 204.

1. Cf. for a basic bibliography and analysis of the sources, J. FORNÉS, "La noción de 'status' en Derecho canónico" (Pamplona 1975). Also idem, "El concepto de estado de perfección: consideraciones críticas," in *Ius Canonicum* 46 (1983), pp. 681–711; idem, "Notas sobre el 'Duo sunt genera christianorum' del Decreto de Graciano," in *Ius Canonicum* 60 (1990), pp. 607–632; idem, "El principio de igualdad en el ordenamiento canónico," in *Fidelium iura* 2 (1992), pp. 113–144; J. HERVADA, *Tres estudios sobre el uso del término laico* (Pamplona 1973).

Starting from the fundamental description of the faithful, book II is divided into three parts: "Christ's Faithful" (part I), "The Hierarchical Constitution of the Church" (part II), and "Institutes of Consecrated Life and Societies of Apostolic Life" (part III).

All of this leads us back to the structure of the Church, that is, to those aspects and elements of that sole and mysterious reality which the Second Vatican Council and, with it, book II of the *CIC* has termed, in accordance with the most ancient tradition, the people of God.

2. *The Structure of the Church*

In fact, the dogmatic constitution *Lumen gentium*, apart from referring to the Church using the Pauline image of the "Corpus mysticum" (cf. *LG* 7), has its entire second chapter on "The people of God." The radical or basic equality of the faithful, by virtue of baptism, is expressed there with remarkable clarity, "for those who believe in Christ, are reborn, not from a corruptible seed, but from an incorruptible one through the word of the living God (cf. 1 Pet. 1:23), not from flesh, but from water and the Holy Spirit (cf. Jn. 3:5–6) and are finally established *as a chosen race, a royal priesthood, a holy nation … who in times past were not a people, but now are the people of God* (1 Pet. 2:9–10)" (*LG* 9; cf. CCC 781ff).

This people have Christ as their head; as their condition, the dignity and liberty of children of God; as their law, the new commandment to love as Christ loved us; and as their goal, to extend the reign of God more and more over the earth (cf. *LG* 9; CCC 782).

Therefore, when we speak of the Church as a *people*, although this term may have distinct meanings in everyday speech, it serves, on the one hand, to emphasize a common origin which makes all Christians members of the same family and, on the other, a fundamental or radical equality of all the faithful by virtue of which they enjoy the same dignity, the same means, the same faith, and are responsible for the common purpose of the entire Church on the spiritual level This is the true sense in which the word *people* is applied to the Church, because, as is well known, it harks back to its biblical sense, the People of Israel, descendants of Abraham, and is made fully manifest in the new people of God, redeemed through Christ.

We are a people who, while "not everyone marches along the same path, yet all are called to sanctity and have obtained an equal privilege of faith through the justice of God (cf. 2 Pet. 1:1). Although by Christ's will some are established as teachers, dispensers of the mysteries and pastors; for others, there remains a true equality between all with regard to the dignity and to the activity which is common to all the faithful in the building up of the Body of Christ" (*LG* 32).

In summary, considering the Church as a people emphasizes the radical or fundamental equality of all the faithful arising from baptism. This is an equality, which, from a juridical perspective, translates into a constitutional condition: the *status of the faithful,* stated explicitly in the *CIC,* in particular in c. 204 and in cc. 208–223.

Furthermore, connected to this principle of equality is the entire vision of the Church's structure, which demands that the principle of variety and the institutional principle should also be taken into account.[2] The harmonious conjoining of these two principles casts a clear reflection in the complete systematization of ideas in the contents of book II.

The principle of variety (cf. *LG* 32; *AG* 28) is rooted in the sacrament of baptism as a freedom intrinsic to the children of God. It brings with it the possibility that distinct modes of life, distinct apostolic forms, and distinct ecclesial missions co-exist as a response to different talents and charisms (*Spiritus ubi vult spirat*). At the same time it takes into account, in all other respects, that the sense of *de conformitate evangelica* applies to the hierarchy (cf. *LG* 12; *AA* 3). Then it follows that there does exist distinct *subjective juridical conditions* which are based on the same radical *constitutional condition of the faithful.*

The institutional principle (hierarchical principle or principle of distinction of functions) presupposes that certain specific functions exist in the Church, which have been assigned by its divine Founder, not to the Christian people or to the community, but rather to the hierarchy. For this reason, without diminishing the fundamental equality of all the faithful, there coexists a *distinction of functions* which is also of divine law (see commentary on c. 208).

Thus, before individual questions are explored, we note that we have already discussed the basic inspiration and the guiding principles which run throughout book II. We can synthesize them into the following four points:

a) On a constitutional level, it must be stressed that there is a common status of the faithful: a condition of radical equality which is incompatible with a class-based vision of persons in the Church (*LG* 32; cc. 204, 208).

b) On a spiritual level, in accord with Vatican II (*LG* ch. V), the universal call to sanctity is emphasized (cf., for example, c. 210). This precludes a minimalist or reductionist approach for the need to aspire to the fullness of Christian life. Because of this, a conceptual problem emerges with the words "state of perfection" as they have been usually understood.

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2. Cf. in this sense J. HERVADA, *Elementos de Derecho constitucional canónico* (Pamplona 1987), pp. 48–54; J. FORNÉS, *La ciencia canónica contemporánea (Valoración crítica)* (Pamplona 1984), pp. 67–109; idem, "El principio de igualdad...," cit., pp. 113–144 (see also the commentary on c. 208).

In other words, there is a class-based bias when using these words strictly because they infer that some Christians are called to sanctity (to perfection), while others are not.[3] "Strengthened by so many and such great means of salvation, all the faithful," *Lumen gentium* 11 emphasizes, "whatever their condition or state—though each in his own way—are called by the Lord to that perfection of sanctity by which the Father himself is perfect." Later on, the same Vatican II document insists, "The Lord Jesus, divine teacher and model of all perfection, preached holiness of life (of which he is the author and maker) to each and every one of his disciples without distinction: *You, therefore, must be perfect, as your heavenly Father is perfect* (Mt. 5: 48) ... It is therefore quite clear that all Christians in any state or walk of life are called to the fullness of Christian life and to the perfection of love, and by this holiness a more human manner of life is fostered also in earthly society" (*LG* 40).

c) From the point of view of constitutional law, insofar as receiving the sacrament of orders is concerned, the assumption is made that a requirement of indispensable suitability is involved for performing those specific functions which thus require it. Although it creates a difference of essence and not merely one of degree (*LG* 10) among those who have received the sacrament and those who have not, the former are not *more faithful* than the latter, but only *equally faithful*, even though they possess the ministerial priesthood which is different in essence from the common priesthood, and intended precisely for the *ministry* and for performing *ministerial functions* (see commentary on c. 207).

This line of thought has stressed that there is "a common participation in the mission itself of the Church ... a sphere of radical equality among all *christifideles*. Despite the differences in function resulting from an essential distinction of divine law when the subject has received the sacrament of orders, there is a common equality, which they in no way can destroy."[4]

In any event, these clarifications do not weaken, but emphasize the immense value of the ministerial priesthood. What is involved is a difference in essence and not merely of degree with all the attendant consequences which receiving the sacrament of orders entails from a spiritual and theological point of view.

d) Certainly, in considering the reception of the sacrament of orders, the public profession of the evangelical counsels in the institutes of consecrated life (cc. 573ff) and the style of life inherent to societies of apostolic life (cc. 731ff), including those who embrace evangelical counsels (c. 731 § 2), determines that as a result of the principle of variety, there are diverse active and passive juridical states within the subjective or per-

3. Cf. J. FORNÉS, "El concepto de estado de perfección...," cit., pp. 681–711.
4. A. DEL PORTILLO, *Fieles y laicos en la Iglesia*, 3rd ed. (Pamplona 1991), p. 45.

sonal sphere of the ordained, of the consecrated faithful (religious and secular institutes), and of those who are "approximate" (*accedunt*) to these (c. 731). Such states do not presuppose exceptions to the common condition of the faithful, but qualify the manifestations of the exercise of this condition, as an effect of the concrete manifestation in a specific sense, according to the various possibilities offered by the common Christian vocation.[5]

For this reason, after treating "the obligations and rights of all the faithful" (cc. 208–223), the norms are set forth within book II, governing "the obligations and rights of the lay members of Christ's Faithful" (cc. 224–231). Among these, c. 225 § 2 emphasizes that the faithful's function is to sanctify and order the temporal structures in such a way that this becomes their specific mission in the Church.[6] These norms are paralleled in "the obligations and rights of clerics" (cc. 273–289); the obligations and rights of religious (cf. cc. 662–672); members of the secular institutes (cf. cc. 710ff, for example: cc. 719, 724, 728); and of those who belong to the societies of apostolic life (cc. 731ff, for example: cc. 737, 739, 740, 741 § 2).

A document of the CDF, recalled by John Paul II in the apostolic exhortation *Christifideles laici*, states that "the Church is a differentiated body in which each individual has a role; their tasks are distinct and must not be confused. They do not favor the superiority of one over the other, nor do they provide an excuse for jealousy; the only higher gift, which can and must be desired, is love (cf. 1 Cor: 12–13). The greatest in the Kingdom of heaven are not the ministers but the saints."[7]

3. *Reference to a few particular questions*

Following the outline of book II, several questions of interest will be explored from the perspective of the organization of ideas as well as that of content.

In what follows, it must be stated that no attempt has been made to be exhaustive; such questions are the subject of other commentaries.

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5. Cf. in this sense, and for all these points, P. LOMBARDÍA, "Estructura del ordenamiento canónico," in *Derecho canónico*, 2nd ed. (Pamplona 1975), pp. 181–183; idem, *Lecciones de Derecho canónico* (Madrid 1984), pp. 82–86.

6. Cf. J. FORNÉS, "La condición jurídica del laico en la Iglesia," in *Ius Canonicum* 51 (1986), pp. 35–61, and the bibliographical references cited therein.

7. CDF, *Instrucción sobre la cuestión de la admisión de la mujer al sacerdocio ministerial "Inter insigniores,"* October 15, 1976, in *AAS* 69 (1977), p. 115, text cited in *CL* 51, note 190. The Instr. *Inter insigniores* was explicitly recalled by John Paul II—actually citing the last part of the paragraph here cited—in the Apostolic Letter *Ordinatio sacerdotalis*, May 22, 1994, no. 3.

c) *Some questions relative to the outline of book II*

The doctrine has given attention to some pitfalls or discrepancies in the arrangement of book II. However it has not ceased to consider the relative importance of a systematization in light of the contents itself of the norms.

For example, in regard to part II, which is entitled "The Hierarchical Constitution of the Church," it has been pointed out that, as an effect of the systematic criteria used in both sections (sect. I: "The Supreme Authority of the Church"; sect. II: "Particular churches and Their Groupings"), norms regulating all jurisdictional structures belonging to the Church were not situated in the most appropriate place. "In order to produce a systematic parallel, section I should have been given a title something like, 'On the universal Church and the Supreme Authority Constituted within It' ... This would have allowed certain hierarchical structures of the universal Church to be included in this section, which, due to the above mentioned problem have had to remain outside part II of book II. That is the concrete case of the personal prelatures, located in part I."[12]

Moreover, the contents of section II do not seem to reflect the heading in its entirety. For example, given that norms on Bishops' Conferences fall under the heading "Groupings of particular churches" (book II, part II, sect. II, title II), one could be lead to believe that we are confronted by some true "groupings of particular churches." In all honesty, this is in contrast to the literal language of c. 447, which draws from *Christus Dominus* 38, 1 and defines Bishops' Conference—as "the assembly of the bishops [*coetus Episcoporum*] of a country or of a certain territory ... to promote, in accordance with the law, that greater good which the Church offers to mankind ..."[13]

It becomes clear that this involves a problem more terminological, strictly speaking, rather than one of content. For this reason "the value of the options of a Code regarding systematic arrangement, which are necessarily relative and partial, or even conventional in many cases, should not be overly exaggerated."[14] From this we can see the importance of understanding the content of the juridical institutions under consideration, their exact configuration and their harmonious insertion into the whole picture,

12. E. MOLANO, "Las opciones sistemáticas del CIC y el lugar de las estructuras jerárquicas de la Iglesia," in *Ius Canonicum* 66 (1993), pp. 472–473.

13. Cf. regarding this point J. FORNÉS, "Naturaleza sinodal de los Concilios particulares y de las Conferencias episcopales," in *L'Année Canonique*, hors série, vol. I (Paris 1992), pp. 305–348, especially note 111 on pp. 342–343 and the bibliography cited therein; idem, "Naturaleza jurídica de las Conferencias episcopales" in *Ius in vita et in missione Ecclesial* (Vatican City 1994), pp. 637–657.

14. E. MOLANO, "Las opciones sistemáticas...," cit., p. 475.

independent of where they are situated in any one section. And this task applies, to a large extent, to doctrine.

In this sense, it is also interesting to call special attention to the focus which is now given to the regulations of associations of the faithful, the institutes of consecrated life and of the societies of apostolic life, as compared to the *CIC*/1917.

From a reading of c. 298, we can conclude that, within associations, a distinction must be made between: a) institutes of consecrated life and the societies of apostolic life; and b) other associations of the faithful which, in turn, can be common to all the faithful, clerical associations (whenever the characteristics of c. 302 are satisfied) or lay associations (cf. cc. 327–329).[15]

Furthermore, institutes of consecrated life and societies of apostolic life have separate regulations. The entire part III of book II is devoted to them, while the other associations of the faithful are governed under title V of part I. The new distinction between public and private associations is another significant innovation of the Code in contrast to the *CIC* 1917.

Insofar as the institutes of consecrated life and the societies of apostolic life are concerned, despite the fact that they appear in some of the preparatory *schemata* in a section which could be called: the canon law of associations, linked with the other associations of the faithful,[16] they are treated autonomously from a systematic point of view. This is based, in terms of consecrated life (cf. c. 207 § 1), on considerations of an associative nature as well as institutional one.[17]

At this point, it also should be pointed out that the Congregation of the Roman Curia which, according to *Pastor Bonus*, concerns itself with this subject, is precisely called the *Congregation for the Institutes of Consecrated -Llife and the Societies of Apostolic Life.*

4. *Conclusion*

Perhaps a few words of John Paul II might serve to close this commentary on the general heading of book II, "The people of God." "The instrument, such as the Code," he says in the apostolic constitution *Sacrae disciplinae leges* which promulgates it, "fully accords with the nature of the

15. Cf. J.L. GUTIÉRREZ, commentary on title V, part I, book II, in *Pamplona Com*, p. 229.
16. Cf. *Comm* 2 (1970), pp. 168–181; 5 (1973), pp. 47–69; 6 (1974), pp. 72–93; 7 (1975), pp. 63–92; 9 (1977), pp. 52–61; 10 (1978), pp. 160–179; 11 (1979), pp. 22–66 and 296–346; 12 (1980), pp. 130–187; 13 (1981), pp. 151–211 and 325–407.
17. Cf. T. RINCÓN , commentary on part III of book II, in *Pamplona Com*, pp. 389–390; idem, "Institutos de vida consagrada y sociedades de vida apostólica," in *Manual de Derecho canónico*, 2nd ed. (Pamplona 1991), pp. 217ff.

Church, particularly as presented in the authentic teaching of the Second Vatican Council seen as a whole, and especially in its ecclesiological doctrine. It is even more that, in a certain sense, this new Code can be viewed as an enormous effort to translate that same doctrine into *canonical* terms, in other words, into the ecclesiology of the Council. Because, while it may not be possible to transpose the image of the Church described by conciliar doctrine into 'canonical' language, the Code, however, should always refer back to that image as its original pattern, and should reflect its guiding principles, insofar as it is possible to do, given its own nature ...

"Foremost among the elements which express the true and authentic image of the Church stand out the following: the teaching whereby the Church is presented as the people of God (cf. *LG* 2) and its hierarchical authority as service (*LG* 3); the further teaching which portrays the Church as a communion and then spells out the mutual relationships which must intervene between the particular and the universal Church, and between collegiality and primacy; likewise, the teaching by which all members of the people of God share, each in their own measure, in the threefold priestly, prophetic, and kingly office of Christ, this teaching also being connected to that which looks to the duties and rights of Christ's faithful and specifically the laity; and lastly the assiduity which the Church must devote to ecumenism."[18]

Undoubtedly, these words refer to the entire body of law, but they seem, however, to be particularly appropriate for book II.

In a statement on February 3, 1983 in which he introduced the Code, the Pope alludes directly to book II: "... it is true that the *conciliar postulates*, as well as the *practical guidelines* indicated in the ministry of the Church, find *exact and detailed equivalents* in the new Code, even verbal equivalence at times. I would invite you, only by way of example, to compare ch. II of *Lumen gentium* with book II of the Code: their title is common to both documents, even identical: "De Populo Dei." It will be, a very useful comparison, and will turn out to be illuminating for those who wish to undertake a more painstaking examination, an *exegetical comparison* and *critique of the respective paragraphs and canons*."[19]

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18. JOHN PAUL II, Ap. Const. *Sacrae disciplinae leges*, January 25, 1983, in *AAS* 75, pars 2 (1983), pp. XI–XII.
19. Cf. JOHN PAUL II, "Discurso de presentación del Código de Derecho canónico," February 3, 1983, no. 8, in *Insegnamenti di Giovanni Paolo II* VI, 1 (1983), p. 315.

PARS I
De christifidelibus

PART I
Christ's Faithful

204 **§ 1. Christifideles sunt qui, utpote per baptismum Christo incorporati, in populum Dei sunt constituti, atque hac ratione muneris Christi sacerdotalis, prophetici et regalis suo modo participes facti, secundum propriam cuiusque condicionem, ad missionem exercendam vocantur, quam Deus Ecclesiae in mundo adimplendam concredidit.**

§ 2. Haec Ecclesia, in hoc mundo ut societas constituta et ordinata, subsistit in Ecclesia catholica, a successore Petri et Episcopis in eius communione gubernata.

§ 1. Christ's faithful are those who, since they are incorporated into Christ through baptism, are constituted the people of God. For this reason they participate in their own way in the priestly, prophetic and kingly office of Christ. They are called, each according to his or her particular condition, to exercise the mission which God entrusted to the Church to fulfil in the world.

§ 2. This Church, established and ordered in this world as a society, subsists in the catholic Church, governed by the successor of Peter and the bishops in communion with him.

SOURCES: §1: *LG* 9–17, 31, 34–36; *AA* 2, 6, 7, 9, 10.
§2: *LG* 8, 9, 14, 22, 38; *GS* 40

CROSS REFERENCES: §1: cc. 96, 207, 207–223, 849
§2: c. 330

COMMENTARY

Juan Fornés

In this canon, we find two concepts fundamental to constitutional canon law, with which book II (*The people of God*) opens: the concept of the faithful and the notion of the Church as society.

I. THE CONCEPT OF THE FAITHFUL

1. *Person and faithful*

Paragraph 1 of c. 204 focuses on the concept of the faithful, which, in the context of the Code's regulation, corresponds to the concept of *person in the Church* as referred to in c. 96. The status of persons or subjects in the canonical system, which embraces everyone (whether baptized or not) is an entirely different concept. "If the substantial reality shown in cc. 96 and 204 § 1 is examined, this is the single condition: that of a person who has been baptized into the Church. Thus, these two terms are used in an entirely synonymous sense. In fact, there does not seem to be a contradiction or distinction between the human being *persona in Ecclesia* (much less with the meaning expressed in c. 96) and the faithful. The rights and duties of Christians, in other words, are those which belong to all who have been baptized (c. 96), and are nothing less than the rights and duties of *christifideles* (cc. 208ff)."[1]

Thus, the concept of the faithful is expressed as follows: a member of the people of God, incorporated into Christ through baptism and called, therefore, to exercise the mission which God entrusted to the Church to fulfill in the world—each according to his or her particular condition (cf. CCC, 871–873, 1213).

What is involved is a concept situated in the realm of constitutional law, and from that vantage point, from the perspective that all persons in the Church of Christ are equal. That is, they have the same fundamental rights and duties set forth in cc. 208–223.

1. Cf. G. LO CASTRO, *Il soggetto e i suoi diritti nell'ordinamento canonico* (Milan 1985), pp. 59–60. Also idem, "La rappresentazione giuridica della condizione umana nel diritto canonico," in *Il Diritto ecclesiastico* (1981), pp. 239–289; idem, "Condizione del fedele e concettualizzazione giuridica," in *Ius Ecclesiae* 3 (1991), pp. 3ff, in particular, pp. 24–32; P. LOMBARDÍA, *Lecciones de Derecho canónico* (Madrid 1984), pp. 135–138. Also cf. *Comm* 2 (1970), pp. 89–93; 14 (1982), pp. 156–157; 17 (1985), pp. 163–167; 18 (1986), p. 366.

2. *Fundamental equality and distinction of functions*

In a particularly clear way, Vatican II has stressed, what was obvious in the life and doctrine of Christianity in the first centuries:[2] the fundamental or radical equality of all the faithful by virtue of the sacrament of baptism. As a consequence of receiving this sacrament, all the faithful are found to have a fundamental condition of equality and therefore enjoy a common status: the *juridical-constitutional status of faithful*: As Del Portillo has written in this regard, shortly after the Second Vatican Council: "It is necessary to insist—that the structure by which the Church was constructed includes, through Divine law: a) a *primary relationship*, by virtue of which all Christians form one community, one society, whose common purpose is the establishment of the Kingdom of Christ. Through this bond, they all should devote themselves to this common purpose, by which they possess the condition of the faithful. They are *christifideles*, *cives Ecclesiae*, whose condition is that of equality in dignity and freedom as children of God; b) a *hierarchical relationship*, by means of which the people of God are organized in functional terms, with a visible Head over the entire universal Church along with Pastors who preside over particular churches. Thus, the Church is the new people of God who live within a hierarchical order, in order to bring about the Kingdom of God."[3]

The principal of fundamental or radical equality has remained clearly formulated and energetically emphasized in numbers 9 and 32 of the dogmatic constitution *Lumen gentium*. "Although by Christ's will some—we read in this last number—are established as teachers, dispensers of the mysteries and pastors for the others, there remains, nevertheless, a true equality between all with regard to the dignity and to the activity which is common to all the faithful in the building up of the Body of Christ" (*LG* 32). Juridically, this principal translates into the *constitutional status of the faithful:* a juridical position which is basic and common—to all the baptized. All are equal in regard to the vocation of holiness, the dignity and freedom of Christians and the shared action for the purpose of *aedificatio Ecclesiae*. This action, of its very nature, is not inherent to the ecclesiastical organization, as such; or, in other words, it is not an action which corresponds to hierarchical entities insofar as they are those entities responsible for the public and official purpose of the Church. The principal of equality presupposes that there exist certain fundamental rights and duties common

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2. Cf. J. FORNÉS, *La noción de "status" en Derecho canónico* (Pamplona 1975), for appropriate references to the bibliography and sources.

3. A. DEL PORTILLO, "Dinamicidad y funcionalidad de las estructuras pastorales," in *Ius Canonicum* 9 (1969), pp. 323–324. Also cf., P. FELICI, *Il Concilio Vaticano II e la nuova codificazione canonica* (Rome 1967), pp.12ff; idem, "Comunità e dignità della persona," in *Persona e ordinamento nella Chiesa* (Milan 1975), pp. 11ff; F. RETAMAL, *La igualdad fundamental de los fieles en la Iglesia según la Constitución dogmática "Lumen Gentium"* (Santiago de Chile 1980).

to all the faithful,[4] which as discussed above have been formulated in the statement contained in cc. 208–223. This statement is intended to be neither exhaustive nor systematic.

It is obvious that the radical equality of all the faithful (also cf. c. 208) should be considered within the general framework of the constitutional principles of the Church; that is, in connection with the principal of free choice and of institutions.[5] This will help avoid *aporias* (all the faithful are equal—all the faithful are unequal) or falling into clearly erroneous interpretations, for example, blurring the distinction between the common priesthood and the ministerial priesthood.

3. *Juridical condition*

One must therefore keep in mind the important qualifier found in the canon which is the subject of this commentary: "each according to his or her particular condition"; or the parallel language in c. 96, in regard to the rights and duties proper to Christians, "in accordance with each one's status."

The diversity of the faithful is expressed there: all faithful are equal. The principle of equality stated in c. 208 should not prevent the subjective juridical statuses from being multiple without affecting the constitutional and basic nucleus intrinsic to equality. For this reason, the capacity to act is not the same for all persons, but rather, is determined in accordance with the juridical status of each. This condition, in turn, depends on a series of circumstances that will be discussed below.

In the last analysis, from a juridical point of view, what is involved are the consequences of the principle of free choice: each faithful person is a unique faithful person who cannot be replicated.

In this sense, when considering the norms of the code, the circumstances determining the subjective juridical status of the faithful—their canonical condition—can be described as follows:

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4. For a different perspective, cf. P.J. VILADRICH, *Teoría de los derechos fundamentales del fiel. Presupuestos críticos* (Pamplona 1969); J.Mª GONZÁLEZ DEL VALLE, *Derechos fundamentales y derechos públicos subjetivos en la Iglesia* (Pamplona 1971); P. HINDER, *Grundrechte in der Kirchen. Eine Untersuchung zur Begründung der Grundrechte in der Kirche* (Freiburg 1977); *Les droits fondamentaux du chrétien dans l'Église et dans la societé* (Fribourg Switzerland—Freiburg i. Br.-Milan 1981); D. CENALMOR, *La Ley fundamental de la Iglesia. Historia y análisis de un proyecto legislativo* (Pamplona 1991).

5. Cf. J. HERVADA, *Elementos de Derecho constitucional canónico* (Pamplona 1987), pp. 48–54; idem, *Pensamientos de un canonista en la hora presente* (Pamplona 1989), pp. 81ff; J. FORNÉS, "Naturaleza sinodal de los Concilios particulares y de las Conferencias episcopales," in *L'Année canonique* (hors série), 1992, note 32, pp. 314–315.

a) The reflections, inherent in the diversity of functions, within the subjective or personal scope of the *status* of sacred minister: for example, the obligation of celibacy (c. 277) and the resulting impediment to marriage arising from sacred orders (c. 1087), and other rights and obligations which are included in those mentioned in cc. 273ff: the prohibitions against accepting civil public offices (c. 285 § 3), against engaging in trade or commerce (c. 286), against playing an active role in political parties or in managing trade unions (c. 287 § 1), etc.

b) The reflections of the diversity of functions which are transposed into duties deriving from the *status* of the consecrated faithful: for example, those mentioned in cc. 598ff among others, that of celibacy, with the attendant consequence of the impediment to the vow of marriage in the case of the religious, as governed under c. 1088 (cf. also cc. 662ff in regard to the religious).

c) The reflections inherent in the diversity of the status of those faithful who have contracted marriage: cf., for example, cc. 1134–1140.

d) The general framework of conditions which serve to determine and modify one's capacity to act as indicated in cc. 96–112, where matters are governed in regard to age, illness, legal domicile, family relationship and rites, as specified by the *canonical status of persons.*[6]

e) To this must be added what has been emphasized in c. 96, that is: in addition to "each person's condition" which has already been referred to above that the duties and rights inherent to Christians—the rights of the faithful—are clearly defined and affected by the fact of whether or not one is "in ecclesiastical communion," and by the fact that one may be bound by "a legitimately imposed sanction." In other words, there might be some circumstance which would prevent full ecclesiastical communion (c. 205)—heresy, apostasy, schism: cf., among others, cc. 751, 1364, 1184—the rights of the faithful thereby being affected. And the same thing occurs if, as a result of having committed some crime, one incurs "a legitimately imposed sanction," that is, a medicinal penalty or censure such as excommunication, interdict, suspension: cc. 1131–1335, or an expiatory penalty (c. 1336), also taking into account (c. 1312 § 3) the penal remedies and penances (cc. 1339–1340) (cf. c. 1312 in general). It is obvious that these other circumstances which are alluded to here also affect the subjective juridical status of the faithful: that is, their canonical condition.

6. Cf. J. FORNÉS, "El principio de igualdad en el ordenamiento canónico," in *Fidelium iura* 2 (1992), pp. 113ff; A. DE FUENMAYOR, commentaries on cc. 96–112, in *Pamplona Com*, pp. 110–118; A. BERNÁRDEZ, *Parte general de Derecho Canónico* (Madrid 1990), pp. 163–173.

4. *The constitutional condition of the faithful*

In summary, § 1 of the canon, which is the subject of this commentary, when it considers the concept of the faithful in clear harmony with Vatican II, has energetically stressed the *radical* or *basic equality* of all the members of the Church (*LG* 32). This equality is stressed despite the fact that there exists a differentiation on the functional level which, in some cases (*LG* 10), has ontological roots (the character produced by the sacrament of orders does not make one *more faithful* than he who has not received it, but indicates only that one possesses a priesthood—a ministerial priesthood—essentially different from the common priesthood, precisely in order to perform the offices or sacred ministries).[7] Despite a differentiation of functions which are rooted in the hierarchical or institutional principle (*LG* 18 and 32), and in baptism itself, all the faithful should be drawn to the fullness of Christian life; in other words, to sanctity (GL 39–40). The vocations and charismas of the Holy Spirit are extremely diverse (*LG* 32).

A "class-based" conception of the Church —its structure erected upon "canonical states"—comes apart precisely on these cornerstones of doctrine, since it is incompatible with the single and unified condition of the faithful, who hold certain fundamental rights and duties, independent of their inclusion into one "state" or the other.[8] The principle of equality prevents us from speaking about two or three classes, categories or states of Christians. There is only one category of Christian: the faithful.[9] From this is derived the idea that —as has already been stressed by doctrine shortly after Vatican II— the "*status personae* cannot assume in canon law more than a characterization of the capacity to act and of the *content of personality*, that is, a characterization of the set of rights and duties which emanate from it."[10]

It should not surprise us, therefore, that the Code, without dispensing entirely with the use of the term "state," shows an orientation different from the *CIC*/1917, despite the fact that the term is used with a variety of meanings which are, on occasion, slightly generic. For example, it designates the juridical position of those who have entered into marriage (cc. 1063 and 1134), the state of health of those to be ordained (c. 1051), the possibility of exercising *ius connubii* due to the absence of anything incompatible with the bond of marriage (cc. 1113, 1114, 1121 § 3), the consecrated life (cc. 207 § 2), 574), and the clerical state of sacred minister (cc. 290–293).

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7. Cf. J. ESCRIVÁ DE BALAGUER, *Sacerdote para la eternidad*, 4th ed. (Madrid 1977), p. 24.
8. Cf. J. FORNÉS, *La noción de "status...,"* cit., pp. 267ff.
9. Cf. idem, "Notas sobre el 'Duo sunt genera christianorum' del Decreto de Graciano," in *Ius Canonicum* 60 (1990), pp. 607–632.
10. A. DEL PORTILLO, *Fieles y laicos en la Iglesia* (Pamplona 1969), note p. 69; 3rd ed. (Pamplona 1991), p. 66.

The current Code, following the doctrinal principles of Vatican II very closely, has replaced the old book *De personis* of the *CIC*/1917 with that of *De populo Dei* (book II), in which, as we have seen, the concept of *christifidelis* becomes fundamental: a member of the people of God with a basic condition common to all. In other words, they possess a condition of radical equality derived from baptism, solely qualified by a differentiation of functions originating in diverse forms of participation in the common mission of the Church, in accordance with personal vocation and the attendant reflections on subjective juridical status.

"On the fundamental level as members of the people of God as has been written in this regard—there are not inequalities as to whether we are more or less children of God, or whether we are more or less *christifideles*. Clearly "in the area of status, there are no differences, and thus ... all the faithful have the same radical status before the Law."[11]

II. The Church as society

§ 2 of the canon, the subject of this commentary, highlights the societal character of the Church.

The Second Vatican Council, even though it has applied to the Church the term *people* (*LG* chap. II) or *communio*,[11] has also used the idea of *society* and does so especially when it refers to the hierarchical principle, which carries with it a distinction of functions among the members of the people of God. "But, the society structured with hierarchical organs and the mystical body of Christ, the visible society and the spiritual community, the earthly Church and the Church endowed with heavenly riches, are not to be thought of as two realities. On the contrary, they form one complex reality which comes together from a human and a divine element" (*LG* 8). This is also true in regard to the hierarchical composition of the Church and, in particular, to the office of bishop, as the aforementioned Constitution indicates that the Apostles took care to establish successors in the hierachically constituted society (*LG* 20).

The view of the Church as a *society* entails two fundamental aspects which are to be stressed: *a)* its character as an *institution*, that is, the reality which traces its origin to the will of the Divine Founder and which has certain traits of permanence, transcendence and independence of the persons of whom it is comprised; *b)* its structure as an organic, whole social

11. Cf. *LG* 4, 8, 13–15, 18, 21, 24–25; *DV* 10; *GS* 32; *UR* 2–4, 14, 15, 17–19, 22. Cf. CDF, Litt. *Communionis notio*, May 28, 1992, in *AAS* 85 (1993), pp. 838–850.

body, which is not the simple sum of its parts, but rather an entity on its own which is independent of its members.[12]

By virtue of the institutional principle, there exist in the Church certain functions whose origin does not reside in the Christian people, but rather which have been assigned and granted directly by Christ to the hierarchy, i.e., the Roman Pontiff, and the bishops together in communion with him.[13] From this derives the fact that, together with the radical or basic equality of all the faithful, which has already been discussed when commenting on § 1 of this canon, there exists a *diversity of functions* in the people of God, which is also of divine law precisely because Christ has founded his Church as a hierarchically structured community.[14]

12. Cf. J. HERVADA-P. LOMBARDÍA, *El Derecho del Pueblo de Dios*, I (Pamplona 1970), pp. 35ff, 253–254, 313ff; J. HERVADA, *Elementos de Derecho constitucional canónico* (Pamplona 1987), pp. 54ff; J. FORNÉS, *La ciencia canónica contemporánea (Valoración crítica)* (Pamplona 1984), pp. 89ff.

13. Cf. CCC, 816 and 874ff; on canonical doctrine, cf., e.g., J. HERVADA-P. LOMBARDÍA, *El Derecho del Pueblo de Dios*, cit., pp. 35–36; J. HERVADA, *Elementos*... cit., pp. 47–54; O. GIACCHI, "Tradizione ed innovazione nella Chiesa dopo il Concilio," in *Atti del Congresso Internazionale di Diritto Canonico. La Chiesa dopo il Concilio* (Milan 1972), pp. 44–47.

14. Cf. J. HERRANZ, "Orientamenti e prospettive della revisione del Codice di Diritto canonico," in *Il Diritto Ecclesiastico* (1978), p. 45; idem, *Studi sulla nuova legislazione della Chiesa* (Milan 1990), pp. 43–44, 232–233.

205 **Plene in communione Ecclesiae catholicae his in terris sunt illi baptizati, qui in eius compage visibili cum Christo iunguntur, vinculis nempe professionis fidei, sacramentorum et ecclesiastici regiminis.**

Those baptised are in full communion with the catholic Church here on earth who are joined with Christ in his visible body, through the bonds of profession of faith, the sacraments and ecclesiastical governance.

SOURCES: *LG* 14

CROSS REFERENCES: cc. 11, 96, 149, 171 § 1, 4°, 194, 204, 208–223, 336, 375, 380, 675, 750, 751, 753, 833, 840, 844, 1021, 1184, 1364, 1741

COMMENTARY

Juan Fornés

1. *The Church considered as "communion"*

The Church can be understood as a *communio*. But it is more than that: "The concept of *communion* lies at the heart of the self-knowledge of the Church."[1]

However, as the Letter *Communionis notio* of the CDF, dated May, 28, 1992, has clearly emphasized, the concept of *communion* "is not univocal" (*Communionis notio*, 3). From that emerges the fact that such a concept should possess a set of elements, namely: "it should also be able to express the sacramental nature of the Church while 'we are in exile, far away from the Lord', as well as the particular unity which makes the faithful members of the same Body, the mystical Body of Christ, an organically structured community, 'a people united through the unity of the Father, the Son, and the Holy Spirit,' also sheathed with the means appropriate to a visible and social union" (*Communionis notio*, 3).

In fact, when describing the Church as a *communio*, it stresses, among other things, the solidarity of the faithful,[2] which originates in the unity of ontological bonds and from participating in certain objectives and

1. Cf. JOHN PAUL II, "Discurso a los Obispos de Estados Unidos de América," September 16, 1987, no. 1, in *Insegnamenti di Giovanni Paolo II* X, 3 (1987), p. 553.
2. Cf. *LG* 4,8,13–15,18,21,24–25; *DV* 10; *GS* 32; *UR* 2–4,14–15,17–19,22.

common purposes (also cf. c. 204).[3] For that reason, the application of this term within this context becomes entirely appropriate, on the condition that it is to be kept in mind that it is not sufficient to refer exclusively to the bonds of charity which unite Christians, but also that the juridical aspects or imprint should also be taken into account, since—as the prior explanatory note in chapter III of the dogmatic constitution *Lumen gentium* makes clear—the *communio* "is not a vague affiliation, but rather, an organic reality, which requires a juridical form" (*LG*, *pen*, 2).

"*Communio*—as Paul VI has insisted—is the union of those baptized, a spiritual reality, but represented in social terms"[4]; and he later adds: "all members of the Church are obligated to recognize the demands of a legal system; if this should fail, the *communio* in Christ could not be put into effect in social terms, nor could it function effectively."[5]

It is necessary for this reason to delineate clearly the bonds which make it possible for one to belong to that *communio* fully, in other words, the bonds of communion (cf. CCC, 815–819).

2. *The bonds of communion*

Such bonds are synthesized in this canon into three aspects:

a) The profession of faith, that is, adherence to a single *depositum fidei*, as revealed in the sacred Scripture, transmitted by tradition, and as the magisterium of the Church proposes and interprets it.

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3. Cf. L. HERTLING, "Communio und Primat," in *Miscellanea Historiae Pontificiae* 7 (Rome 1943); J. HAMER, *La Iglesia es una comunión* (Barcelona 1965); idem, "Dix thèses sur l'Église comme communion," in *Nova et Vetera* 59 (1984), pp. 161ff; V. FERRER, *Iglesia*, II, 6: art. "Comunión eclesiástica," in *Gran Enciclopedia Rialp* XII (Madrid 1973), pp. 384ff; W. BERTRAMS, "De gradibus 'communionis' in doctrina Concilii Vaticani II," in *Gregorianum* 47 (1966), pp. 286ff; J. HERVADA-P. LOMBARDÍA, *El Derecho del Pueblo de Dios*, I (Pamplona 1970), pp. 250ff; 325ff; 395ff; J. HERVADA, *Elementos de Derecho constitucional canónico* (Pamplona 1987), pp. 56ff, 174ff, 260ff; W. ONCLIN, "Ponencia al II Congreso Internacional de Derecho canónico," in *Persona e ordinamento nella Chiesa* (Milan 1975), pp. 212ff; W. AYMANS, *Das synodale Element in der Kirchenverfassung* (Munich 1970); J. FORNÉS, *La ciencia canónica contemporánea (Valoración crítica)* (Pamplona 1984), pp. 77ff; P.A. BONNET, *Comunione ecclesiale. Diritto e potere* (Turin 1993), for many bibliographic references; especially in *Ius in vita et in missione Ecclesiae* (Vatican City 1993), and A. MARZOA, *Comunión y Derecho. Significación e implicaciones de ambos conceptos* (Pamplona 1999).

4. PAUL VI, "Discorso ai partecipanti," in *Persona e ordinamento nella Chiesa. Atti del II Congresso internazionale di diritto canonico. Milano 10– 16 settembre 1973* (Milan 1975), p. 584. Cf. *L'Osservatore Romano*, September 17–18, 1973.

5. PAUL VI, "Discorso..." cit., p. 685. Also cf. "Allocutio S.S. Johannis Pauli II iis qui interfuerunt IV Conventui Internationali Juris Canonici," in *Les droits fondamentaux du chrétien dans l'Église et dans la societé* (Freiburg Switzerland-Freiburg i. Br.-Milan 1981), pp. XXIXff and *L'Osservatore Romano*, October 13–14, 1980.

b) The unity among the sacraments, the first of which is baptism—the sacrament which is *ianua Ecclesiae* (cf. *LG* 14)—which is precisely that which grants the *condition of the faithful* (cf. 204). For the meaning of sanctifying grace in regard to this subject, see the commentary on c. 897.

c) Unity with the Pastors or hierarchical communion (the profession "of the ecclesiastical system").

In this same sense, Paul VI has summarized in concise and graphic terms the exact meaning of the Church as *communio*, enumerating the bonds needed for it to exist as such, which intertwine Christians in solidarity: "This means that Christian life should unfold within this *communio*: the fundamental rights on a supernatural order which are intended to be acquired and exercised in the Church *correspond* precisely to certain specific duties, among which are the fundamental duties of the profession of faith in the Church and of recognition of the sacraments and hierarchical constitution."[6] Moreover, he adds, "this same *communio* of the Church is ordered to undertake the building up of the Social Body of Christ. Therefore, the mission entrusted to the Church of Christ also requires the cooperation of all the faithful in order to bring it about."[7]

These bonds of communion—faith, sacraments, ecclesiastical system—are broken by apostasy, heresy and schism (c. 751). The first is the total rejection of the Christian faith; the second, the persistent denial of a truth which must be believed in with divine and catholic faith (a truth which includes "Those things ... which are contained in the word of God as it has been written or handed down by tradition, that is, in the single deposit of faith entrusted to the Church, and which are at the same time proposed as divinely revealed either by the solemn magisterium of the Church, or by its ordinary and universal magisterium, which in fact is manifested by the common adherence of the faithful under the guidance of the sacred magisterium. All are therefore bound to avoid any contrary doctrines": c. 750). The third—schism—is the withdrawal of submission to the Supreme Pontiff or from communion with the members of the Church subject to him.

Apostates, heretics, and schismatics incur *lata sententiae* excommunion (c. 1364), even though "brothers and sisters born and baptized outside visible communion with the catholic Church that is, in separate ecclesial communities ..."[8] ought not to be considered as such.

Therefore, those who fall under any of these categories are not in full communion with the Church. As a matter of fact their status as faithful is

6. PAUL VI, "Discorso..." cit., p. 584.
7. Ibid., p. 584. Also cf. CCC, 815.
8. Cf. Directory *Ad totam Ecclesiam*, of May 14, 1967, no. 19 (*AAS* 59, 1967, pp. 574–592); cf. *UR* 3; and finally, DE/1993, no. 131 and CCC, 817–822.

affected: this involves those who are faithful (baptized) but who are not so in the full sense of the word, and, despite the fact that they continue to belong in some fashion to the Church, they are "separated" from it. From a juridical point of view, these circumstances carry with them the suspension of specific ecclesial rights and obligations (the rights of the faithful or rights inherent to Christians), except for those which refer to reintegration into full ecclesiastical communion.[9]

In regard to the *communicatio in sacris*—that is, participation in liturgical worship or in the administration of the sacraments of persons belonging to different Christian denominations which are not in full communion—what has been established in c. 844 should be consulted.

Finally, what has been set forth in c. 11 should also be borne in mind in regard to submission to "merely ecclesiastical" laws, which only "bind those baptized in the catholic Church, and those who have been received into it." This means that, quite apart from the obligatory nature inherent in the precepts of natural and positive divine law, which the ecclesiastical authority cannot restrict, condition, or dispense with, those specified in the canon are the only ones subject to the imperative precepts of human law. Those baptized in the catholic Church, and those who have been received into it from other religious denominations not in full communion with it, are objectively obligated. On the other hand, those Catholics who have since abandoned the Church, regardless of their possible good faith, cease to be so bound.[10] "It should be kept in mind—it has been written in this regard—that the binding aspect of canon law is based on factors of a spiritual nature (not on recourse to physical violence), the effectiveness of which depends largely on personal faith and disposition. Consequently, it is reasonable to establish in principle an objective obligation to adhere to laws, which does not disappear by reason of the mere fact that one has abandoned the faith or has broken the hierarchical communion."[11]

9. Cf. J. HERVADA, commentary on c. 205, in *Pamplona Com.* Cf. *UR* 3.
10. Cf. P. LOMBARDÍA, commentary on c. 11, in *Pamplona Com.*
11. Ibid.

206 **§ 1. Speciali ratione cum Ecclesia conectunturcatechumeni, qui nempe, Spiritu Sancto movente, explicita voluntate ut eidem incorporentur expetunt, ideoque hoc ipso voto, sicut et vita fidei, spei et caritatis quam agunt, coniunguntur cum Ecclesia, quae eos iam ut suos fovet.**

§ 2. Catechumenorum specialem curam habet Ecclesia quae, dum eos ad vitam ducendam evangelicam invitat eosque ad sacros ritus celebrandos introducit, eisdem varias iam largitur praerogativas, quae christianorum sunt propriae.

§ 1. Catechumens are linked with the Church in a special way since, moved by the Holy Spirit, they are expressing an explicit desire to be incorporated in the Church. By this very desire, as well as by the life of faith, hope and charity which they lead, they are joined to the Church which already cherishes them as its own.

§ 2. The Church has a special care for catechumens. While it invites them to lead an evangelical life, and introduces them to the celebration of the sacred rites, it already accords them various prerogatives which are proper to Christians.

SOURCES: § 1: *LG* 14
§ 2: *SC* 64; *AG* 14

CROSS REFERENCES: cc. 11, 96, 204, 747, 748, 788, 851, 865, 1086, 1170, 1183, 1299, 1476

COMMENTARY

Juan Fornés

Those not baptized are persons under canon law—that is, they are subject to the rights and obligations which fall within the scope of canon law—even though they are not *members* of the Church: they are not the *faithful* (cf. cc. 96 and 204).

Their position is thus characterized by two features: *a)* a negative feature: the non-reception of baptism and therefore, their non-incorporation into the Church, with all the rights and duties intrinsic to Christians, in accord with c. 96, which is, in turn, linked to another feature: they are not subject to ecclesiastical laws, either, in consonance with c. 11; *b)* a positive feature: their inclusion in the universal saving will of

God, an issue which the Second Vatican Council remembered in *Lumen gentium* 13 and *Dignitatis humanae* 1.[1]

The result of this is recognition on the part of the Code of canon law of the right of all to be instructed in the faith and to have baptism administered to them, if one should so ask for it, having clearly manifested one's intent to do so, as well as the respect for full liberty in regard to incorporation into the Church. This arises from one's dignity as a human being (cf. cc. 747, 748, 865). In particular, the Code expressly recognizes certain capabilities of the non-baptized, as seen, for example, in cc. 1086, 1299 § 1, 1476.

This entire line of reasoning pertaining to the non-baptized has a certain resonance for certain non-baptized: the *catechumens*, in other words, those who are not yet incorporated into the Church, but have expressed their desire to do so. The Second Vatican Council has made express reference to them: *Lumen gentium* 14, *Sacrosanctum Concilium*, 64–65, *Ad gentes* 14 (cf. also CLgC, 1249).

The Decree *Ad gentes* specifically considers the catechumens to the effect that "they are already joined to the Church" (*AG* 14), and expressly indicates that their juridical status is to be clearly set forth in a future code (cf. *AG* 14).

Moreover, according to the canon on which we are commenting here, the condition of catechumen is acquired through the express desire of the party concerned—that is, the expression of one's desire to be incorporated into the Church—without a formal act of reception being necessary, since the canon speaks about one's incorporation "by this very desire" (*ideoque hoc ipso voto*).

In any event, c. 788, within the norms pertaining to "the missionary activity of the Church" (title II of book III), and c. 851, within the context of the norms concerning baptism of adults, set forth very specific percepts, even though they indicate this subject is to be integrated into norms drawn up by the Bishops' Conferences.

In this sense, article 3 of the Second General Decree of the Spanish Conference of Bishops[2] establishes the following in regard to c. 788 § 3: "The catechumens, specifically, those who are preparing themselves for the fruitful reception of the sacraments of Christian initiation at the appropriate time, whom the Church already welcomes as its own through the life of faith, hope and charity which they bear, enjoy a particular

1. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia*, 3rd ed. (Pamplona 1991), pp. 274ff; P. LOMBARDÍA, "El estatuto jurídico del catecúmeno según los textos del Concilio Vaticano II," in his *Escritos de Derecho Canónico*, II (Pamplona 1973), pp. 205ff. Also cf., e.g., *Comm* 17 (1985), pp. 166–167.

2. BOCEE 6 (1985), p. 62. (Editor's Note: For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.)

juridical status, which consist at least of the following obligations and prerogatives:

1. Obligations: Assuming their membership into the catechumenate, in accordance with the rites of Christian initiation of adults, they shall follow the successive steps of Christian initiation indicated there; they shall participate weekly in the liturgy of the Word, whether with the Christian community, or individually; and they shall lead an evangelical life proper to their condition.

2. Prerogatives: Sacramentals can be imparted to them, in accordance with c. 1770; a godparent shall accompany each one during his or her journey as a catechumen, in other words, a man or woman whom he or she knows, who shall help him or her and be a witness to his or her habits, faith, and will. The catechumen may, and even should, participate in the apostolic activity of the Church. If they enter into marriage, the Christian community shall accompany them with a fitting religious celebration which the local Ordinary of that place shall specify. They are comparable to the faithful on the subject of funeral rites.

And, insofar as c. 851, 1° is concerned, article 8, 2 of the First General Decree[3] indicates that "what has been provided for in the Books of Rites of the Sacraments, duly approved by this Bishops' Conference, should be observed ..."

In fact, the preceptsof the *Ordo initiationis christianae adultorum*[4]—which describes in detail the rites, the steps which it includes, etc.—and the corresponding adaptations at each Bishops' Conference, should be kept in mind about the catechumenate.

In all other respects, the *CIC* also refers to the catechumenate in c. 865 § 1, in regard to the baptism of adults. Canons. 1170 and 1183 § 1 regulate matters pertaining to blessings and funeral rites.

In summary, then, both the canon which is the subject of this commentary (c. 206), as well as c. 788, govern in general the status of the catechumen within the canonical system. However it should be noted, as Lombardía has already insisted insightfully,[5] that "in both canons ... probably due to the influence of doctrine which denies the unbaptized the status of subjects within the canonical system, the term 'rights' is avoided and is replaced by the more ambigious term, 'prerogatives'."

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3. BOCEE 3 (1984), p. 102. (Editor's Note: For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.)
4. *AAS* 64 (1972), p. 252.
5. P. LOMBARDÍA, *Lecciones de Derecho canónico* (Madrid 1984), p. 138.

It seems, however, even more appropriate (see the commentary on c. 204)[6] to consider that human being (including the *nasciturus*: cf. cc. 864 and 871), has—as we stated at the beginning of the commentary on this canon—the status of a physical person, of a subject, within the canonical system, although only those who have been baptized enjoy the constitutional status of the *faithful*.

6. Cf. P. LOMBARDÍA, *Lecciones*... cit., pp. 135–138.

207 **§ 1. Ex divina institutione, inter christifideles sunt in Ecclesia ministri sacri, qui in iure et clerici vocantur; ceteri autem et laici nuncupantur.**

§ 2. Ex utraque hac parte habentur christifideles, qui professione consiliorum evangelicorum per vota aut alia sacra ligamina, ab Ecclesia agnita et sancita, suo peculiari modo Deo consecrantur et Ecclesiae missioni salvificae prosunt; quorum status, licet ad hierarchicam Ecclesiae structuram non spectet, ad eius tamen vitam et sanctitatem pertinet.

§ 1. By divine institution, among the faithful there are in the Church sacred ministers, who in law are also called clerics; the others are called lay people.

§ 2. Drawn from both groups are those of the faithful who, professing the evangelical counsels through vows or other sacred bonds recognised and approved by the Church, are consecrated to God in their own special way and promote the salvific mission of the Church. Their state, although it does not belong to the hierarchical structure of the Church, does pertain to its life and holiness.

SOURCES: § 1: c.107; *LG* 10, 20, 30–33
§ 2: c.107; *LG* 43–47

CROSS REFERENCES: cc. 11, 96–112, 204, 208–223, 224–231, 232–293, 573–746, 849, 1008–1054, 1191–1204

COMMENTARY

Juan Fornés

1. *Canon 207 and its sources*

The text of this canon is based on the language contained in c. 107 of the *CIC*/1917, which is cited as one of its *fontes* in the edition of the *CIC* with *fontes* undertaken by the CPI.[1] This results in the fact that special attention must be given to it, for purposes of proper interpretation because (see the commentary on book II) there are certain significant corrective factors in regard to the focus of the *CIC*/1917, provided basically by the

1. Cf. CPI, *Codex Iuris Canonici fontium annotatione et Indice analytico-alphabetico auctus* (Vatican City 1989), c. 207 on p. 56.

doctrine of the Second Vatican Council, whose sources are also cited in this canon (in particular, *LG* 10, 20, 30–33, 43–47).

The text of c. 107 of the *CIC*/1917, in fact, reads literally as follows: "Ex divina institutione sunt in Ecclesia *clerici* a *laicis* distincti, licet non omnes clerici sint divinae institutionis; utrique autem possunt esse *religiosi.*" In other words, it made a distinction among persons in the Church on the basis of the so-called canonical states (status), arising, not from the radical equality of persons in the Church from a juridical point of view, but rather from the distinct configuration of their rights and duties according to the group or class (rank, status) in which they found themselves. That is to say, this distinction was, on the basis of the juridical concept of person which at that time, prevailed in the doctrine, both canonical and civil.[2]

On the other hand, the canon which is now the subject of this commentary is expressed in a similar manner, but, in turn, in a wider and more complex way, in its attempt to gather the sufficient nuances of meaning, all of which require—as already indicated above—that a painstaking exegesis not be lead again to the interpretation of a class-based sign, as could have been done with c. 107 of the previous code.

2. *The common priesthood and the ministerial priesthood*

In an appropriate hermeneutic, it could be said that what the canon expresses in § 1 would reflect, all things considered, a distinction of essence, and not only of degree, between the common priesthood and the ministerial priesthood. The common priesthood is inherent in all the *faithful*, which includes those who have received the sacred orders. Clerics do not lose the common priesthood, but receive an additional priesthood: the ministerial priesthood. (cf. *LG* 10).

According to the norms of the *CIC*/1917, one was a "cleric" from the moment at which the tonsure was received (c. 108 § 1), which carried with it, among other things, a set of "rights and privileges of clerics" (cc. 118–123). It is well known that the doctrine of Vatican II has exerted a marked influence on the overall focus of this subject. The subsequent *Ministeria quaedam* already introduced reforms which were later incorporated into the *CIC*, so that the "clerics" or "sacred ministers," alluded to in § 1 of the canon which is the subject of this commentary, are only deacons, presbyters and the bishops (c. 1009 § 1). Likewise, c. 266 § 1 clearly emphasizes: "by receiving the diaconate, one becomes a cleric ..." On the other hand, the reception of the ministries of lector or acolyte—which constituted, among others, the former minor orders—whether in a stable way

2. For a complete consideration of the question, cf. J. FORNÉS, *La noción de "status" en Derecho canónico* (Pamplona 1975) (see commentaries on book II, and on cc. 204 and 208).

(c. 230 § 1), or instead as a prior step or prerequisite towards receiving the diaconate (cc. 1035, 1050, 3°), did not entail the assumption of clerical status. Rather one continued to be a member of the laity.[3]

Consequently, receiving the sacrament of orders—the basis of the distinction between sacred ministers or clerics and the laity alluded to in § 1 of the legal precept which is the subject of our commentary—from the point of view of constitutional canon law, presupposes that two things be taken into account: *a*) that it does not affect the radical or fundamental equality of all the faithful (cc. 204 and 208): "this common participation in the mission of the Church creates ... a sphere of radical equality among all *christifideles*. That is, differences in function—although they may be the fruit of a difference in essence and of divine law when the subject has received the sacrament of orders—is constructed upon the basis of a common equality, which is never destroyed";[4] b) that it involves a requirement of suitability which is indispensable for performing specific functions which necessitate that this sacrament be received; that it creates—as has been stated before—a difference in essence and not merely of degree (cf. *LG* 10). Those who have received it are not *more faithful* than the unordained, but rather only equally faithful, for they have an additional priesthood—the ministerial priesthood—different in essence from the common priesthood, which is necessary, and indispensable, for the ministry and for the performance of *ministerial functions* (see the commentary on c. 204).[5]

It can thus be seen that, while it is necessary to make all these clarifications for the purposes of a correction interpretation of § 1 of c. 207, the enormous richness of content of the ministerial priesthood clearly stands out, with the significant consequences that receiving the sacrament of orders carries with it, both from a spiritual, as well as a theological, point of view, and also from a juridical point of view, for the one's own personal status in life (cf. cc. 273–289).

3. *Consecrated life*

In § 2 of the canon, the possibility of consecrated life—which does not refer to the hierarchical structure of the Church, although it belongs to its life and sanctity—is stressed, and is contemplated not only from a personal and an associative point of view, but also from an institutional

3. Cf., e.g., T. RINCÓN, commentary on title III, part I, book II, in *Pamplona Com*, p. 186; idem, "Los sujetos del ordenamiento canónico," in *Manual de Derecho canónico*, 2nd ed. (Pamplona 1991), pp. 177ff.
4. A. DEL PORTILLO, *Fieles y laicos en la Iglesia*, 3rd ed. (Pamplona 1991), p. 45.
5. Cf., for a practical application of these principles, *EdM*, preamble.

perspective, as regulated in the *CIC* in part III of book II (cc. 573–730 and also 731–746).

An expressive text from *Lumen gentium* remarks, "Guided by the Holy Spirit, Church authority has been at pains to give a right interpretation of the counsels [evangelical counsels], to regulate their practice, and also to set up stable forms of living embodying them. From the God-given seed of the counsels a wonderful and wide-spreading tree has grown up in the field of the Lord, branching out into various forms of religious life lived in solitude or in community. Different religious families have come into existence in which spiritual resources are multiplied for the progress in holiness of their members and for the good of the entire body of Christ. Members of these families enjoy many helps towards holiness of life. They have a stable and more solidly based way of Christian life. They receive well-proven teaching on seeking after perfection. They are bound together in brotherly communion in the service of Christ. Their Christian freedom is fortified by obedience. Thus they are enabled to live securely and to maintain faithfully the religious life to which they have pledged themselves. Rejoicing in spirit they advance on the road of charity" (*LG* 43).

4. *Radical equality and diversity of functions*

Moreover, in accordance with what has been discussed above, it seems that in order to achieve a correct interpretation of what has been set forth in this canon, it is necessary to start with the radical equality of all the faithful and the diversity of functions which exists in the Church (cf. CCC, 814, 873, 934).[6]

In fact, the existence of a "classification of the faithful" within the Church ought not to be introduced into a reading of this legal text, in the strict sense of this expression. There are not "classes" of faithful, but instead, only one "class": precisely that of *christifideles*, a condition shared by all those who comprise the people of God.[7]

There are, however, distinct subjective juridical statuses, derived—from among other circumstances—from the diverse functions which each one performs in the Church, for whose mission all are equally responsible (cf. c. 204 § 1).

From the point of view of the diversity of functions, the final outcome is that subjective juridical statuses are extremely diverse, as a

6. See also commentaries on book II, part I, tit. I, and on cc. 204 and 208.

7. Cf., e.g., J. FORNÉS, "Notas sobre el 'Duo sunt genera christianorum' del Decreto de Graciano," in *Ius Canonicum* 60 (1990), pp. 607–632, with outlined bibliographical references.

consequence of the multiple factors which determine the capability of each person, of each member of the faithful, to act.

For this reason—always from this perspective of a diversity of functions—a significant fact would be whether one of the *faithful* has received sacred orders or not: in the first case, he would be an ordained faithful or cleric (c. 207 § 1, which we have already discussed; while cc. 266 § 1, 1009 § 1, and, in general, cc. 273–293), while in the second case, he would be a lay faithful (c. 207 § 1, which is the subject of our attention at the present time; and in general, cc. 224–231). Another significant fact is whether the faithful—either as sacred minister or not, should he not have received the sacrament of orders—has consecrated himself to God through the profession of the evangelical counsels by vows or other sacred bonds (for example, oaths, promises; cf. cc. 1191–1204), recognized and sanctioned by the Church (cc. 573–730, and also 731–746).

5. *Typology of the faithful*

In summary, according to the literal wording of the text, c. 207 may be described in this way:

Types of *faithful* (cc. 204 and 208) existing in the Church:

A. Ordained: sacred ministers or clerics

1. Not consecrated (ordinary secular clerics)

2. Consecrated

a) Religious (separated from the world: c. 607 § 3)

b) Secular

B. Not ordained, also called laypersons

1. Not consecrated: common lay faithful or ordinary Christians

2. Consecrated

a) Religious (separated from the world: c. 607 § 3)

b) Secular

In other words—as emphasized by the doctrine[8]—in overcoming a class-based vision of the Church and with the appearance of forms of consecrated life having a note of secularity, the division of persons between clerics and laity (twofold division), or that of clerics, religious and laity (threefold division), remains insufficient. It can be deduced from the text of c. 207 that other divisions should be added, depending on the perspective adopted. In any event, if one begins with the profession of the evan-

8. Cf. J. HERVADA, *Pensamientos de un canonista en la hora presente* (Pamplona 1992), pp. 133–134.

gelical counsels or consecrated life—that is, from what has been specified under § 2 of the canon now being discussed upon—"this threefold division can be reached: *a)* common and ordinary faithful, that is, those who possess the status of faithful, without consecrated life; *b)* ordinary clerics, in other words, those who have received the sacrament of orders but do not lead a consecrated life (the consecration of the sacrament which they receive is different); and *c)* the consecrated."[9]

However. we insist this typology of the faithful is the result of diverse functions which—on a basis of radical or fundamental equality—each one performs in the Church and which, as a result, carry with them certain concrete demands, shaping their personal juridical status.[10]

For this reason, subjective juridical statuses (*canonical statuses*) can be extremely varied, since they are the reflection of one's self-image within the personal sphere. The demands which the performance of a specific function carries with it in the Church or which arise from circumstances, in the last analysis, determine the capacity of a person to act (cf., for example, cc. 96–112; 204; 273ff, and specifically, c. 277, in connection with c. 1087; cc. 285 § 3, 286, 287 § 1, 598ff, 662ff, 1134–1140; see also the commentary on c. 204).

9. Ibid., p. 134.

10. Cf., e.g., J. HERVADA, *Pensamientos*..., cit., pp. 121–140; E. BAURA-J. MIRAS, "Notas para una tipología de los fieles a la luz de sus respectivos estatutos jurídicos," in *La misión del laico en la Iglesia y en el mundo* (Pamplona 1987), pp. 337–350.

TITULUS I
De omnium christifidelium obligationibus et iuribus

TITLE I
The Obligations and Rights of all Christ's Faithful

INTRODUCTION

Juan Fornés

1. *Codification of the Canons and fundamental rights*

The principle of radical equality, clearly emphasized in *Lumen gentium* 9 and 32, carries with it the existence of certain fundamental rights and duties common to all the faithful; that, is, certain juridical requirements arising directly from baptism, which grants the ontological-sacramental and constitutional status of being one of the faithful (cc. 96 and 204).[1] The *CIC*, after stating this principle of equality, which has been already discussed above in the first canon of this title (c. 208), takes up a list of "obligations and rights of all the faithful," emanating, with the exception of cc. 209 and 222 § 2, from what has now become, the expanded project of *Lex Ecclesiae fundamentalis.*[2]

1. Cf. CCC, 872 and 1269. A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos*, 3rd ed. (Pamplona 1991); J. HERVADA-P. LOMBARDÍA, *El Derecho del Pueblo de Dios*, I (Pamplona 1970), pp. 267–312; J. HERVADA, *Elementos de Derecho constitucional canónico* (Pamplona 1987), pp. 95–151; P.J. VILADRICH, *Teoría de los derechos fundamentales del fiel. Presupuestos críticos* (Pamplona 1969); J.Mª. GONZÁLEZ DEL VALLE, *Derechos fundamentales y derechos públicos subjetivos en la Iglesia* (Pamplona 1971); P. HINDER, *Grundrechte in der Kirchen. Eine Untersuchung zur Begründung der Grundrechte in der Kirche* (Freiburg 1977); *Les droits fondamentaux du chrétien dans l'Église et dans la societé* (Freiburg Switzlerland-Freiburg i. Br.-Milan 1981).

2. Regarding the comparative works on LEF, cf. *Comm* 1 (1969), pp. 29–30, 37, 41–42, 101, 105, 111–112, 114–120; 2 (1970), pp. 26, 82–89, 122–123, 213–216; 3 (1971), pp. 45, 50–69, 169–185, 206–212; 4 (1972), pp. 120–160; 5 (1973), pp. 196–216; 6 (1974), pp. 29–30, 59–72, 199–201; 8 (1976), pp. 78–108, 201–208; 9 (1977), pp. 83–116, 212, 274–303; 12 (1980), pp. 25–47; 13 (1981), pp. 44–110; 16 (1984), pp. 91–99. With regard to the bibliography of the projects of LEF (the last one being from 1980), cf. REDACCIÓN IUS CANONICUM, *El Proyecto de Ley Fundamental de la Iglesia. Texto bilingüe y análisis crítico* (Pamplona 1971); *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972); *Lex*

In fact, the sixteen canons (from 9 to 24) dealing with the fundamental rights and duties of the faithful of the *Schema postremum* of the *LEF* (1980)—at times with a certain degree of editorial adjustment—were included in the *CIC* under the title which is the subject of this commentary.[3] And, insofar as the inclusion of cc. 209 and 222 § 2 is concerned, the following explanation concerning the doctrine has been given: "The inclusion of c. 209—in which the principle of communion is discussed, insofar as it legitimates the exercise of those rights and increases the exercise of duties in regard to the universal and particular Church—seems to us as a significant fact. We do not know when it was decided, but it was most likely done during the last phases of writing the Code, perhaps during one of the last two revisions personally done by the Pope. It is also possible that the opinions of a sector of the doctrine might have exerted an influence on that decision [the author refers to passages in Corecco, Beyer, and also perhaps to those of Fedele]... The addition of c. 222 § 2 was contemporary; the duty to promote social justice and the duty to assist the poor with one's own resources are discussed there."[4]

2. *The rights and duties of the faithful*

Thus, in regard to these matters under discussion, the fundamental equality of the faithful is stressed in this title, through the statement, intended to be neither exhaustive nor systematic, of the right to the divine message of salvation (c. 211); the right to petition, and the right to freedom of expression and of public opinion (c. 212); the right to spiritual goods (c. 213); the right to one's own rite and the right to one's own form of spiritual life (c. 214); the right of association and the right to hold meetings (c. 215); the right to promote apostolic enterprises (c. 216); the right to a Christian education (c. 217); the right to freedom of research and to express the results obtained (c. 218); the right to choose a state of life (c. 219); the right to a good reputation (c. 220); and finally the right to act and to defend oneself by judicial process (c. 221). Together with these rights, the faithful have the duty to maintain ecclesiastical communion (c. 209); to seek sanctity (c. 210); to promote evangelization (c. 211); to obey the teachings and governance of pastors (c. 212); the duty—

fundamentalis Ecclesiae. Atti della Tavola Rotonda a cura di Attilio Moroni (Macerata, 12–13 ottobre 1971) (Milan 1973); *De lege Ecclesiae fundamentali condenda. Conventus canonistarum hispano-germanicus Salmanticae diebus 20–23 januarii 1972 habitus* (Salamanca 1974); "Lex Ecclesiae Fundamentalis," in *Studia et Documenta Iuris Canonici* VI, *Annali di dottrina e giurisprudenza canonica* (Arcisodalizio della Curia Romana) (Rome 1974); and, with regard to all of the above, the complete and documented monograph of D. CENALMOR, *La ley fundamental de la Iglesia. Historia y análisis de un proyecto legislativo* (Pamplona 1991).

3. Cf. D. CENALMOR, *La ley fundamental...*, cit., p. 274 and documentation on pp. 469–505.
4. Ibid., note 80, on pp. 274–275.

correlating to human or natural law—to respect the good reputation and privacy of others (c. 220); and the duty to provide for the needs of the Church (c. 222).

This list closes with a canon in which limits on the exercise of those rights are discussed, which are none other than the common good of the Church, and the rights of others and their duties in regard to others. At the same time, ecclesiastical authority can govern them, bearing in mind the common good (c. 223).

A certain sector of the doctrine has expressed reservations in view of the description of these rights and duties as *fundamental*, which probably has led to the decision to suppress this term, so as to speak solely of "the rights of all the faithful."

Corecco, for example, when referring to the concept of "fundamentality" in the canonical system, has stressed that such a concept "correlates to the function that the rights of all individuals acquire at the heart of the constitutional system of the modern state. For this reason, it might be more correct in the ecclesial field, not to define the rights of Christians as fundamental rights, but rather, quite possibly as primary rights or simply as rights."[5] And further on, he adds that, based on an examination "of the communion-like structure of the Church and from Christian theological anthropology, it seems to me that the positive test for the impossibility of applying this category of 'fundamentality,' using an analogy *proportionalitatis*, to the rights of the Christian in the Church can be sufficiently valid."[6]

Beyer, in turn, has spoken about *communio* as a criterion for fundamental rights.[7]

On the other hand, using other methodological assumptions, Lombardía has clearly emphasized—in terms that continue to be valid[8]—that "to concentrate the totality of canonical thought regarding the fundamental rights on the notion of *communio* presents difficulties ... Above all, it would be necessary, for purposes of sustaining a meaningful dialogue, to overcome the obstacle consisting of the lack of consistency in the doctrine about the notion itself of *communio*. I limit my remarks to indicating that, in my opinion, a much clearer doctrinal position turns out to be that which makes a group of juridical conditions—fundamental rights and duties—derive from the *condicio communionis* but without insisting that such a perspective exhausts the subject in its entirety, given that, in addi-

5. Cf. E. CORECCO, "Considerazioni sul problema dei diritti fondamentali del cristiano nella Chiesa e nella società," in *Les droits fondamentaux*..., cit., p. 1219.

6. Cf. ibid., p. 1225.

7. Cf. J. BEYER, "La *communio* comme critère des droits fondamentaux," in *Les droits fondamentaux*..., cit., pp. 79ff.

8. It is essential to take into account the document from CDF, Letter *Communionis notio*, May 28, 1992, in *AAS* 85 (1993), pp. 838–850 (see commentary on c. 205).

tion, the conditions derived from the *condicio libertatis*, the *condicio activa* and the *condicio subiectionis* must be taken into account."[9]

In any event—as Cenalmor has pointed out, and as has been discussed—it is probable that the opinions expressed by the authors cited above[10] would have exerted an influence on the current formalization of the rights of the faithful in the *CIC*; specifically, on the addition to c. 209 and on the decision to suppress the adjective *fundamentalis*, in order to speak solely of "*iura christifidelium.*"[11]

It also seems to be of interest to observe that not all the rights and duties enumerated in this title could be strictly classified as fundamental rights and duties "of the faithful," *insofar as they are faithful*; that is, in the sense that they have their origin in baptism, since the latter are, strictly speaking, the fundamental rights and duties *of the faithful*. Some of them (for example, the right to a good reputation, the right to privacy, and the duty to respect these rights: c. 220; or the duty to promote social justice: c. 222 § 2) are, in reality, human, natural rights and duties, although it is undeniable that baptism elevates, completes, and reinforces them.

3. *Juridical nature*

Thus, after our having considered all these facts, three issues emerge which should be emphasized here.

The first leads to the understanding that, independently of the suppression of the adjective *fundamental*, formalization of the rights and duties of the faithful in cc. 208–223 presupposes that these legal principles are considered to have a constitutional character. In fact, as Lombardía has indicated, "what is involved is a title of a legal body which formally does not distinguish itself from the rest of the code, but which has an unquestionable constitutional content and many of the rights proclaimed here and the duties imposed are rooted in divine law. As a consequence, it ought to be accorded a certain precedence, such that it would lead to interpreting the other norms in a manner coherent with fundamental rights

9. P. LOMBARDÍA, "Los derechos fundamentales del cristiano en la Iglesia y en la sociedad," in *Les droits fondamentaux...*, cit., p. 28. Also cf. J. HERVADA, *Elementos de Derecho constitucional...*, cit., pp. 102–147.

10. Cf., e.g., E. CORECCO, "Considerazioni...," cit., pp. 1207ff; J. BEYER, "La *communio*...," cit., pp. 79ff; P. FEDELE, "La norma fondamentale dell'ordinamento canonico," in *La norma en el Derecho canónico*, II (Pamplona 1979), pp. 423ff.

11. Cf. D. CENALMOR, *La ley fundamental...*, cit., pp. 279–280.

and duties, thereby ensuring their effective application, even in the face of legal precepts in the canon which might possibly be unaware of them."[12]

The second issue to be stressed is the following: the technico-juridical formalization of the fundamental rights of the faithful does not assume an approach with a bias towards vindicating ecclesiastical authority, nor of an "egalitarian democratism," which would, among other things, blur the essential distinction between the common priesthood and the ministerial priesthood (*LG* 10), as can be deduced from the suggestions proposed by certain sectors in the doctrine.[13]

In fact, together with this fundamental equality—formalized technically through the declaration of the rights and duties of the faithful—there is a diversity of functions in the people of God: a diversity of juridical statuses, of ministries, of offices; but, above all, a diversity of functions grounded ontologically in receiving the sacrament of Orders and guided fully towards performance of different functions within the Church. "This doctrinal reality"—it has been written in this regard—"produces the consequence that the principle of co-responsibility or participation of all the faithful in the mission of the Church is not understood and applied in the new legislative body—nor could it be—in a *democratic* sense, because the Church is not a democratic society. Due to the absence, perhaps, of sufficient education in theology or the lack of a juridical perspective, it has often occurred in recent years that, starting from a true assumption—the co-responsibility of all the faithful for the mission of the Church—some have reached an erroneous conclusion: the democratic and deliberative participation of all the faithful in the governance of the Church, which is the function itself of the hierarchy. In this sense, the principle of co-responsibility, based on a common priesthood, is replaced with another principle that, according to the terminology used by various authors, is called the *synodal* principle of an *expanded collegiality*, the principle of *democratic participation*, or simply put, the principle of *co-responsibility of governance*."[14]

Thus, the declaration of the rights and duties of the faithful contained in cc. 209–223, is simply intended to stress the principle of equality, discussed in c. 208, and to extract the suitable consequences that all of this is predicated on the best search for the common good of the Church (c. 223). In other words, this declaration presupposes a definition of the constitutional core of the status of faithful which has been placed within a

12. P. LOMBARDÍA, *Lecciones de Derecho canónico* (Madrid 1984), pp. 81–82. Also cf. J. HERVADA, commentary on title I, part I, book II, in *Pamplona Com*, p. 173.

13. E.g., cf. O. TER REEGEN, "Les droits du laïc," in *Concilium* 4 (1968), p. 38; J.A. CORIDEN, "Ministries for the future," in *Studia Canonica* 8 (1974), p. 274; W.W. BASSET, "Canon Law Reform: An Agenda for a new Beginning," in *Toward Vatican III. The Work that needs to be done* (Dove, Malvern 1978), pp. 196–213.

14. Cf. J. HERRANZ, *Studi sulla nuova legislazione della Chiesa* (Milan 1990), pp. 43–44, 232–233.

framework structured around two coordinates, clearly emphasized by Vatican II: the dignity and liberty inherent in this status (*LG* 9) and the fact that such dignity and liberty is not a passive, subjective condition, a self-contained condition, but rather, it is essentially dynamic, and open to the co-responsibility of all the faithful in the building up of the Church (*LG* 32). For this reason, as we can clearly see in all other respects in c. 208, the harmony between the sphere of autonomy and the capacity of the faithful to act is a necessary consequence and reflection of the connection between the liberty and dignity of the status of faithful, on the one hand, and their co-responsibility for the building up of the Church, on the other.[15]

The third issue, finally, is closely linked with the preceding questions; it is a consequence of this and has already been alluded to. In short, it amounts to emphasizing that it seemingly is not inappropriate, but instead, it becomes more correct and illuminating, from a juridical point of view, to describe the rights and duties of the faithful enumerated in cc. 208–223 as *fundamental* rights and duties. This is so because—with all the exceptions and remarks expressed above—what is involved are rights and duties innate (*iura et officia nativa*) to the condition of the freedom and dignity of the faithful (*LG* 9), prior to any juridical-positive formalization, which, therefore, possesses the characteristic of being *constitutional* rights and duties:[16] in other words, those which comprise the constitution of the Church itself.

15. Cf. P. LOMBARDÍA , *Lecciones…*, cit., pp. 80–82.
16. Cf. J. HERVADA, "Los derechos fundamentales del fiel a examen," in *Lex Nova* 1 (1991), pp. 226–227.

208 **Inter christifideles omnes, ex eorum quidem in Christo regeneratione, vera viget quoad dignitatem et actionem aequalitas, qua cuncti, secundum propriam cuiusque condicionem et munus, ad aedificationem Corporis Christi cooperantur.**

Flowing from their rebirth in Christ, there is a genuine equality of dignity and action among all of Christ's faithful. Because of this equality they all contribute, each according to his or her own condition and office, to the building up of the body of Christ.

SOURCES: *LG* 32; *GS* 49, 61

CROSS REFERENCES: cc. 96, 204, 207, 209–223, 849

COMMENTARY

Juan Fornés

1. *The principle of equality*

The principle of fundamental equality of all the faithful has been vigorously stressed by Vatican Council II (*LG* 32) and was adopted, almost verbatim, by the primary canons—including the one on which we are now commenting—that the *CIC* devotes to regulating the obligations and rights of all the faithful (see commentary on book II, part I, title I). The ClgC 1269 points out, in turn, "In the same way that baptism is the source of responsibilities and duties the person who is baptized also enjoys rights within the heart of the Church: to receive the sacraments, to be nourished with the word of God and to be sustained by the other spiritual aids of the Church (cf. *LG* 37; *CIC*, cc. 208–223; *CCEO*, c. 675, 2)" (also cf. CCC, 872).

Now, however, this principle of equality among the faithful ought to be seen—in the demands of the wording of the canon itself, "according to his or her own condition and office"—within the general framework of the constitutional principles of the Church; that is, closely linked to the principle of personal freedom and of the constitution of the Church.

2. *Constitutional principles*

In effect, if we consider the Church in its entirety, we find ourselves before a people—the people of God[1]—over whom prevail certain primary structural dimensions that constitute its fundamental and basic core. In other words, we find ourselves before certain constitutional principles, which one sector in the doctrine[2]—without my having found, at this moment in time, any other thesis surpassing this presentation[3]—has synthesized into three parts: the principle of fundamental equality, that of personal freedom, and that of constitution of the Church.

The principle of equality is discussed in c. 208.

The principle of personal freedom (mentioned also with precision in *Lumen gentium* 32 and *Ad gentes* 28) presupposes that equality cannot be, in any sense, uniformity or egalitarianism. On the contrary, it means that—on the basis of the radical or fundamental equality of the status of faithful—various *modes* and *conditions* of life are erected; various rites; various apostolic forms; varying ecclesial missions, according to the multiplicity of graces and charismas. In short, it refers "to the modes of developing the life and activities of the faithful and to the choice of means suitable for them."[4]

In this sense, if the principle of fundamental equality carries with it the consideration of the existence of a radical and basic *constitutional condition of the faithful*, with certain *fundamental rights and duties*, the principle of personal freedom also rooted in the sacrament of baptism—the freedom inherent to the *libertas filiorum Dei*—entails the existence of different juridical conditions. Each one "according to his or her own condition," states the canon which is now the subject of commentary, when speaking of the principle of equality, which is stressed as well by c. 204 § 1 (see commentary) when referring to the same idea of the faithful (cf. c. 96). *Juridical conditions* which arise from the constitutional condition itself of the faithful, but which do not change their basic and primary core. In other words, the response to the charismas and gifts of the Holy Spirit, following the various personal vocations, and, as a result, the

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1. Cf. *LG* ch. II. See the commentary on book II.

2. Cf. J. HERVADA, *Elementos de Derecho constitucional canónico* (Pamplona 1987), pp. 48–54; idem, *Pensamientos de un canonista en la hora presente* (Pamplona 1989), pp. 81ff.

3. For references to the bibliography, cf. J. FORNÉS, "Naturaleza sinodal de los Concilios particulares y de las Conferencias episcopales," in *L'Année canonique*, hors série, I (Paris 1992), pp. 314f, esp. note 32.

4. J. HERVADA, *Elementos*..., cit., p. 51. Also cf., e.g., P.A. D'AVACK, "Il *Populus Dei* nella struttura e nelle funzioni odierne della Chiesa," in *Persona e ordinamento nella Chiesa* (Milan 1975), p. 24; L.F. NAVARRO, "El laico y los principios de igualdad y variedad," in *Ius Canonicum* 51 (1986), pp. 93ff; idem, "Il principio costituzionale di uguaglianza nell'ordinamento canonico," in *Fidelium iura* 2 (1992), pp. 145–163, with the bibliographic references contained in these last two works.

various spiritualities and forms of Christian life—leaving intact its adaptation to the Gospel and taking into account that the judgment of *conformitate evangelica* belongs to the Hierarchy: cf. *Lumen gentium* 12; *Apostolicam actuositatem* 3; and cc. 210, 214–216, 219—are transformed into the existence of different *subjective juridical conditions*, that emanate from the single and unique constitutional condition of the faithful.

In turn, the constitutional principle, which also could be called the hierarchical principle or the principle of distinction of functions, presupposes that there exists a set of activities and functions whose origin does not reside in the Christian people, in the community, but rather has been received by the bearers of Christ. What is involved are hierarchical functions which, when carrying out the mission itself of the pastoral power, constitute the specific structural line of the entire structure of the Church, just as its Divine Founder wished. And precisely in connection with these hierarchical functions, there exists among the faithful—without diminishing their fundamental equality *insofar as they are faithful*, to which the canon which is now the subject of our commentary refers—a differentiation or diversity of functions, which is also of divine law.[5]

Let us concentrate on positioning the principle of equality within a general framework of the constitutional principles of the Church, alluding first to the secular vision of the Church as a *societas inaequalis*, which, at least *prima facie*, contrasts with this principle.

3. *The vision of the Church as an unequal society*

What do we mean to emphasize when we speak about the Church as an unequal society? What are the essential ideas underlying such a description?

When considering the Church as an unequal society—*sic et simpliciter*—two lines of ideas and of historical events converge, which should be kept in mind in order to understand correctly what is assumed when speaking about the Church as a *societas inaequalis*.

The first line of thought which has led to the secular consideration of the Church as a *societas inaequalis* can be traced back almost to the late Roman Empire, when there began to appear in the Fourth Century a distinction of ranks, social classes, states and *ordines* in a Christian community: that is, a process of separation into strata of ecclesial society, which continued to become more pronounced until it was virtually crystallized with the arrival of the Germanic social structures. This concept was consolidated through the political and religious unity that was medi-

5. Cf. J. HERVADA, *Elementos...*, cit., p. 54; also, e.g., J. FORNÉS, *La ciencia canónica contemporánea (Valoración crítica)* (Pamplona 1984), pp. 89ff.

eval Christianity. It was adopted by the *CIC*/1917 and reflected in the majority of authors writing after the Code. And, in short, it continued to be maintained nearly unchanged until Vatican II, with its most typical characteristic being the inequality with which the condition of the faithful was understood: the unequal faithful.[6]

A second line—of much more recent historical vintage—is connected to the need for affirmation, on the part of the magisterium of the Church, of a just doctrine in regard to equality, in view of the errors inherent to the Protestant reformers and, later on, those of a Gallic bent, royalist or liberal, in regard to the nature and origin of ecclesiastical power. It was necessary, in fact, to stress with clarity the existence of a hierarchy with powers originating in divine law, which powers belong only to those who have received them.

This line of thought becomes very clear in the ecclesiological *Schemata*, *Supremi Pastoris* and *Tametsi Deus*, prepared for Vatican Council I.[7] There, although in connection with the precedents of Trent, the errors inherent to the reformers were kept in mind for purposes of refutation. "The affirmation of a true hierarchy of the Church, instituted by Christ himself—as has been pointed out in doctrine, when analyzing these texts—necessarily implies the condemnation of an equality among its members: both aspects appear to be antagonistic, on the basis of the Protestant doctrine which has been examined."[8] Thus c. XI of the initial *schema* "De Ecclesia" states: "Si quis dixerit ecclesiam institutam divinitus esse tanquam societatem aequalium; ab episcopis vero haberi quidem officium et ministerium, non autem propriam regiminis potestatem, quae ipsis divina libere exercenda: anathema sit."[9]

On the other hand, when considering closely the errors inherent to royalist doctrines, support can be found in the notion of the Church as a

6. For important bibliographic information and an analysis of the sources, cf. J. FORNÉS, *La noción de "status" en Derecho canónico* (Pamplona 1975); also idem, "El concepto de estado de perfección: consideraciones críticas," in *Ius Canonicum* 46 (1983), pp. 681–711; idem, "Notas sobre el 'Duo sunt genera christianorum' del Decreto de Graciano," in *Ius Canonicum* 60 (1990), pp. 607–632; idem, "El principio de igualdad en el ordenamiento canónico," in *Fidelium iura* 2 (1992), pp. 113–144; J. HERVADA, *Tres estudios sobre el uso del término laico* (Pamplona 1973).

7. The first *Schema* "De Ecclesia" (*Supremi pastoris*) can be consulted in MANSI, *Sacrorum conciliorum nova et amplissima collectio*, vol. 51, cols. 539–638; the second *Schema* (*Tametsi Deus*) in vol. 53, cols. 308ff. Regarding the primacy and the infalibility of the Roman Pontiff, Dogmatic Constitution, *Pastor aeternus* (July 18, 1870) of Vatican I (Dz. Sch., 3050–3075). Cf. the synthesis offered by F. RETAMAL, *La igualdad fundamental de los fieles en la Iglesia según la Constitución dogmática "Lumen gentium,"* (Santiago de Chile 1980), pp. 27ff.

8. F. RETAMAL, *La igualdad fundamental...*, cit., p. 30.

9. Cf. MANSI, *Sacrorum conciliorum...*, cit., vol. 51, col. 552.

societas perfecta, "an element peacefully admitted by authors opposed to regalism."[10]

In summary—as has been effectively synthesized by the doctrine that has specifically taken up this question—"the affirmation of a radical equality among the faithful in the Church implied in the context of Vatican I the negation of a hierarchy of divine origin, endowed with true jurisdictional power. Thus, a Church where the power originates in the State, lacks the features of a 'perfect society' and consequently has found itself subjected to civil power through its same constitution."[11]

Thus, locating what is meant by the view of the Church as a *societas inaequalis* along suitable coordinates—a view in which, without doubt, there are permanent or unchanging elements, if they are understood correctly, that is, within the complete framework of the constitutional principles of the Church, which were discussed above—let us now examine the clear formulation of the principle of equality in Vatican II.

4. *The formulation of the principle of equality*

As was previously recalled at the beginning of the commentary on this canon, Vatican Council II sharply stressed this principle. "Although by Christ's will, some are established as teachers, dispensers of the mysteries and pastors for others, there remains, nevertheless, a true equality between all with regard to the dignity and to the activity which is common to all the faithful in the building up of the Body of Christ" (*LG* 32).

From a juridical point of view, this principle, rooted in the sacrament of baptism, is transformed into the *constitutional condition of the faithful.* This condition brings with it certain fundamental rights and duties,[12] reflected in the list (intended to be neither exhaustive nor systematic) of cc. 209–223, originating in, with the exception of c. 209 and c. 222 § 2, from the now delayed project of the *LEF.*[13]

This formulation (*LG* 32; c. 208 *CIC*) and this statement (cc. 209–223) have several very important implications, which can be summarized in the following points: *a*) the need to see the constitutional principles

10. F. RETAMAL, *La igualdad fundamental...*, cit., p. 33.
11. Ibid., p. 33.
12. For a different perspective, cf. P.J. VILADRICH, *Teoría de los derechos fundamentales del fiel. Presupuestos críticos* (Pamplona 1969); J.Mª GONZÁLEZ DEL VALLE, *Derechos fundamentales y derechos públicos subjetivos en la Iglesia* (Pamplona 1971); P. HINDER, *Grundrechte in der Kirchen. Eine Untersuchung zur Begründung der Grundrechte in der Kirche* (Freiburg 1977); *Les droits fondamentaux du chrétien dans l'Église et dans la societé* (Fribourg Switzerland-Freiburg i. Br.-Milan 1981). (See commentary on book II, part I, tit. I.).
13. Cf. D. CENALMOR, *La Ley fundamental de la Iglesia. Historia y análisis de un proyecto legislativo* (Pamplona 1991), with documentation and bibliographic references.

within their mutual interconnection; *b*) the appropriateness of specifying clearly the notions of "person or subject in the canonical order" (all human beings) and that of *persona in Ecclesia* or *christifidelis* (faithful) (cc. 96 and 204); *c*) the need to describe the notion of "canonical status" adequately (see commentary on c. 204) and its connection with the principles of equality, personal freedom and constitution of the Church, also taking into consideration the essential distinction between the common priesthood and the ministerial priesthood (*LG* 10); *d*) the crisis in the notion of "state" (*status*), that is, breaking with a rank—based conception or structuring of the Church into "states"[14]; and *e*) the requirement to keep in mind the fundamental or radical equality of all the faithful and the distinction of functions.

(See for all these implications, the introduction to book II; book II, part I, title I; and the commentary on cc. 204 and 207).

14. Cf. note 6.

209 **§ 1. Christifideles obligatione adstringuntur, sua quoque ipsorum agendi ratione, ad communionem semper servandam cum Ecclesia.**

§ 2. Magna cum diligentia officia adimpleant, quibus tenentur erga Ecclesiam tum universam, tum particularem ad quam, secundum iuris praescripta, pertinent.

§ 1. Christ's faithful are bound to preserve their communion with the Church at all times, even in their external actions.

§ 2. They are to carry out with great diligence their responsibilities towards both the universal Church and the particular Church to which they belong.

SOURCES: § 1: *LG* 11–13, 23, 32; *GS* 1; Syn. Bish. *Elapso Oecumenico*, 22 oct. 1969
§ 2: *LG* 30; *AA* 10

CROSS REFERENCES: cc. 96, 107, 149 § 1, 171 § 1, 194 § 1, 199, 1° et 3°, 204 § 1, 205, 208, 210–223, 224, 245 § 2, 266, 333 § 2, 336, 368, 392 § 1, 407 § 3, 529 § 2, 675 § 3, 694 § 1, 1°, 750–754, 839 § 2, 840, 844 §§ 1 et 2, 846, 855, 879, 902, 908, 915, 933, 959, 960, 978 § 2, 996 § 1, 1013, 1041, 2°, 1071 § 1, 4° et 5°, 1071 § 2, 1125, 1°, 1127 § 3, 1184 § 1, 1185, 1271, 1331–1332, 1357 § 1, 1364, 1365, 1369, 1370-1374, 1382, 1741, 1°

COMMENTARY

Daniel Cenalmor

The two paragraphs of c. 209, the second part of c. 220 and c. 222 § 2 are the only prescriptions in this title of the code which do not arise from the article on the fundamental obligations and rights of the faithful from the final *schema* of the *LEF.* Its origin can be found in the chapter "De omnium christifidelium obligationibus et iuribus," which disappeared from the 1977 *schema* "De Populo Dei."

This chapter had been written by the *coetus studiorum* "De Populo Dei," when the promulgation of the *LEF* was assumed. That is why the twenty-two canons (17-38) coud be a development or completion in the Latin Church of the norms of the *LEF* on this subject (cc. 9–24); as is

proven by the fact that, during the working sessions on October 15/20, 1979, the *coetus* itself agreed to dispense with the greater part of these provisions, alleging that, in reality, they were already substantially incorporated into in the *LEF* or into other *schemata* of the CIC.[1]

Later, when it was learned that the Pope had decided not to promulgate the *LEF* "for the time being," the Code Commission concluded that all the canons concerning fundamental obligations and rights of the faithful of the *LEF* should be transferred to the new CIC. The fact is that almost all the canons in the aforementioned chapter of the *schema* "De Populo Dei" that had been saved in 1979 were eliminated. Only c. 19 (c. 209) was preserved. One of those which had been discarded, c. 38, which was also added to the 1982 *schema* of the Code, today constitutes c. 222 § 2. Canon 33, substantially altered, is the source of the second fragment of c. 220.

Even though all these canons do not originate with the *LEF*, they nonetheless have a special value. The fact that the *CCEO* had adopted both these canons from the *LEF* which appear in this title as well as the latter prescriptions, brought to light in the *CIC* from their inception,[2] is sufficiently indicative in this regard. However, independent of this reason, and insofar as c. 209 is concerned, the importance of its content also explains its special value.

1. *The obligation to observe communion* (c. 209 § 1)

a) It has been said that the obligation to observe communion with the Church is the most primary duty of all the baptized.[3] And, in this sense, it seems that the Legislator wished to indicate this by adopting this statement at the beginning of the series of obligations and rights of the faithful which in the 1977 *schema* "De Populo Dei" also appeared in a prominent place.

This obligation derives from baptism (cf. c. 96): the sacrament which, in conjunction with faith, causes people to be incorporated into the ecclesial communion,[4] even though there also exist other channels from which special obligations in regard to communion are derived, primarily confirmation (cf. c. 879), and the assumption of specific ecclesiastical office. Thus, the bearers of sacred offices have, according to their positions, particular duties and responsibilities that the *CIC* specifies in various

1. Cf. *Comm* 12 (1980), pp. 77–91.
2. Cf. *CCEO*, cc. 12 and 25 § 2.
3. Cf. G. F. GHIRLANDA, "Doveri e diritti dei fedeli nella communione ecclesiale," in *La Civiltà Cattolica* 136 (1985), I, p. 24.
4. Cf. *Communionis notio*, 5.

cases (cf., for example, c. 392 § 1, for diocesan bishops; and c. 245 § 2, for Seminary formation faculty).[5]

b) Canon 19 § 1 of the 1977 *schema*, "De Populo Dei," predecessor of the current c. 209 § 1, offered the following reading: "Baptismo irrevocabiliter in Ecclesia Christi incorporati cum sint, christifideles obligatione tenentur curandi ut, agendi ratione quoque, communionem semper servent cum eadem Ecclesia, his quidem in terris a successore Petri et Episcopis in eius communione gubernata."[6]

The first corrections to this text were done by the *coetus studiorum* "De Populo Dei" during the working session on October 18, 1979. They consisted of suppressing both the initial sentence and the expression "his quidem in terris," which were considered unnecessary, as well as the word "curandi," which was deemed to diminish the obligatory nature of the canon anyway. Once the changes were introduced, the resulting text reads as follows: "Christifideles obligatione tenentur ut, agendi ratione quoque, communionem semper servent cum Ecclesia, a Successore Petri et Episcopis in eius communione gubernata."[7]

In the 1982 *schema*, the canon, which already appeared as c. 209 § 1, became the subject again of some changes, mainly in its final part: "Christifideles obligatione *adstringuntur, sua quoque ipsorum* agendi ratione, *ad* communionem semper *servandam* cum Ecclesia, a *Romano Pontifice* et Episcopis *in hierarchica communione cum eiusdem Ecclesiae capite et membris* gubernata."[8]

Finally, in the canon that was promulgated, the last phrase was eliminated ("a Romano Pontifice et Episcopis in hierarchica communione cum eiusdem Ecclesiae capite et membris gubernata"), and the remainder of the text was left unaltered.

c) As may be observed in the brief description of the drafting process of the canon, the phrase "sua quoque agendi ratione" was always maintained, despite the fact that it could have been easily suppressed, based on the argument that if the obligation to observe communion with the Church was adopted by a canon in the *CIC*, this was done to demand attitudes and behaviors consistent with communion. The fact that it was maintained seems to underline that it substantiates and stresses that the obligation to observe communion with the Church affects not only the condition of life

5. Cf. H.J.F. REINHARDT, commentary on cc. 209–223, in *Münsterischer Kommentar zum Codex Iuris Canonici*, Essen 1987, p. 209/1.
6. Cf. *Comm* 12 (1980), p. 80.
7. Cf. ibid.
8. CODE COMMISSION, *Schema Novissimum post consultationem S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutorum vitae consecratae recognitum, iuxta placita Patrum Commissionis deinde emendatum atque Summo Pontifici praesentatum*, (Vatican City 1982).

of the faithful, but also effects their entire behavior as well.[9] Or, in other words, in order to fulfill this obligation, it is not enough for the faithful to remain within the Church, but rather that all their actions ought to safeguard communion in a positive sense, without damaging in any way the bonds of the latter: of the profession of faith, of the sacraments, and of the ecclesiastical system (c. 205).

Insofar as the suppression of the sentence "*a Romano Pontifice et Episcopis in hierarchica communione cum eiusdem Ecclesiae capite et membris gubernata*" is concerned, done as we have seen almost at the last minute, we think that it also served to set the scope of this obligation more clearly. In fact, if it had been preserved, it could have led to the consideration that c. 209 § 1 would affect the public actions of the faithful more than their behavior in the private sphere; or, that it would allude, above all, to the obligation to keep the *communio hierarchica*, and not much to the *communio fidelium*. All in all, this suppression, in addition to having contributed to the sobriety of the text, seems to us even to have improved it.

d) For the baptized, to live in communion with the Church constitutes not only a duty, but also a right, a duty-right in which the primary duties and rights that the faithful possess[10] are summarized, synthesized, and described, and from which the latter derive in the final analysis.[11]

In fact, it can be said that communion is also a right, because it is a good for the faithful: the most fundamental good that they possess, without which all others would lose their value and which should be facilitated: a good, in our opinion, comparable in many aspects to life in its natural sphere.

The primary rights and obligations adopted under this title of the *CIC* converge in this duty-right: the duty to lead a saintly life and to promote the sanctity of the Church (c. 210), the duty and the right to the apostolate (c. 211), the right to receive assistance from the spiritual riches of the Church from their sacred Pastors (c. 213), the duty to obey the Pastors (c. 212 § 1), etc. Thus, in the final analysis, that which these duties and rights of the faithful encourage and protect always leads to preserve and strengthen their communion with the Church and their communion with God.

As a certain author has explained from the *conditio communionis*, or the relationship of communion and solidarity of the people of God in regard to the faith and to the means of salvation, a series of fundamental ju-

9. Cf. M. KAISER, "Die rechtliche Grundstellung der Christgläubigen," in *Handbuch des katholischen Kirchenrechts* (Regensburg 1983), p. 175.

10. Cf. G. FELICIANI, *Il popolo di Dio* (Bologna 1991), pp. 22–23.

11. Cf. E. CORECCO, "Il catalogo dei doveri-diritti del fedele nel CIC," in *I diritti fondamentali della persona umana e la libertà religiosa. Atti del V Colloquio Giuridico (8–10.III.1984)* (Rome 1985), p. 117.

ridical situations rise directly, among which those involving the word of God and the sacraments stand out (cc. 213, 217), since the position of the faithful in regard to these goods includes certain juridical bonds.[12]

e) If communion with the Church must be kept "even in one's manner of acting" it must also be kept, therefore, when exercising the other duties and rights which each possesses. Communion with the Church is the primary criterion for legitimizing and setting the fundamental limits on the exercise of all the duties and rights inherent to the baptized;[13] since, in the Church, each duty and right must be exercised according to the purpose and dynamics intrinsic to the existence of the Church, that is, according to the logic of communion. No Christian behavior, without any distinction whatsoever between the public and private spheres, could be considered legitimate if it contradicts or conflicts with one's belonging to the people of God.[14] Furthermore, in the case in which the obligation to preserve communion with the Church were to be egregiously violated, for example, by committing a delict against the unity of the Church or against ecclesiastical authorities, appropriate punishments are provided for in canon law, including that of excommunication.[15]

Only by preserving communion can the rights and obligations of the faithful acquire their full strength and sense, and can they contribute to the common good of the Church. The duty of obedience to the Pastors (c. 212 § 1), for example, whenever it is combined with the duty to keep communion, apart from requiring, to a greater degree, the internal assent to the mandates of ecclesiastical authority, causes the obligation of external assent to be strengthened, since, as c. 209 § 1 indicates, the faithful must preserve communion with the Church, "even in their manner of acting." And, finally, the shared consideration of both canons demands that, in the tension between the duty of obedience and the corresponding right to be obeyed, any risk of competitiveness between the faithful and authority be eliminated.[16]

f) In regard to the above discussion, it is appropriate to add, finally, that the prescription of c. 209 § 1 also serves to ensure that juridical formalization of obligations and rights of the faithful be perfectly consistent with the existence of the Church; and that it is not fitting, in any way whatsoever, to consider the rights of the faithful as a sign of a dialectical conflict with the Hierarchy, or of a conflict of the faithful amongst themselves.

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12. Cf. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), pp. 119–120.
13. Cf. J. BEYER, "La communio comme critère des droits fondamentaux," in *Les droits fondamentaux du chrétien dans l'Église et dans la société. Actes du IV Congrès International de Droit Canonique. Fribourg (Switzerland) 6–11.X.1980* (Milan 1981), pp. 79–96.
14. Cf. G. FELICIANI, *Il popolo...*, cit., p. 22.
15. Cf. H.J.F. REINHARDT, commentary on cc. 209–223..., cit., p. 209/1.
16. Cf. E. CORECCO, "Il catalogo...," cit., p. 117.

The recognition and protection of the rights of the faithful in the Church—which should never be understood in the individualistic sense characteristic of the Code of Napoleon, but rather in a manner consistent with the communal spirit of the Church[17]—should not come in conflict with the power of the ecclesiastical Hierarchy, nor with the common good of the Church. Furthermore, we believe that this danger, against which a certain author has warned in his day,[18] has been sufficiently salvaged by the CIC. Canon 96 requires ecclesiastical communion so that Christians can fully exercise the duties and rights that are inherent to them. Above all, the prescription contained in c. 209 § 1 avoids the situation whereby one of the faithful, apparently legitimated to claim his/her rights, can do so to the detriment of communion or in an inopportune manner.

Therefore, it should be expected that the effective exercise and protection of the obligations and rights of the faithful contribute, both to the individual good of everyone, as well as to the common good of the Church. Because the individual good forms part of the common good; and it seems that it is perfectly applicable to the case that John Paul II indicated in regard to the interdependence and reciprocity among all persons and society: "all that is accomplished in favour of the person is also a service rendered to society, and all that is done in favour of society redounds to the benefit of the person" (*CL* 40). Whenever the obligations and rights of the faithful are lived and respected by the people of God, that ultimately contributes, not only to the good of individuals, but also to that of the whole Church.

2. *Duties towards the universal and particular Church* (c. 209 § 2)

a) The Church has always insisted more on the fulfillment of duties than on the respect of one's own rights. Within the people of God, no right may be exercised on a basis of egotistic or individualistic values, because this kind of behavior would be an irremediable contrast with the true nature of the rights of Christians.[19] For this reason, it is not at all strange that in this title of the *CIC* regarding the obligations and rights of the faithful, after the fundamental obligation to observe communion always, is formulated (c. 209 § 1) an exhortation to the effect that the faithful fulfill with great diligence the duties they hold with regard to the Church (c. 209 § 2).

17. Cf. P. LOMBARDÍA, "Carismas e Iglesia institucional," in *Lex Ecclesiae Fundamentalis, "Studia et Documenta Iuris Canonici." VI. "Annali di Dottrina e Giurisprudenza canonica"* (Rome 1974), pp. 110–111.
18. Cf. P. FEDELE, "Interpretazione teologica del diritto canonico," in *La norma en el Derecho Canónico (Pamplona, 10–15 de octubre de 1976)* (Pamplona 1979), pp. 23–25.
19. Cf. G. FELICIANI, *Il popolo...*, cit., p. 23.

Even the fact that both prescriptions are conjoined within the same canon also has its own explanation.This systemization of thought can be perfectly comprehensible, if, together with what was stated above, that is, with the interest that the Church has in stressing duties above rights, c. 209 § 2 is, in addition, considered as a corollary to c. 209 § 1, which enables the Legislator to explicate the scope of this norm even further.

In fact, given that the obligation of c. 209 § 1 to observe communion is not merely passive, but also demands positive action from the faithful—to live for this communion[20]—it should be understood that the Legislator has used c. 209 § 2 for the purpose of indicating that the fulfillment of duties toward the Church, in addition to enjoying priority, is the first sphere of action in which the faithful must positively exercise their obligation to observe communion.

The exegesis of one of the sources of c. 209 § 2 corroborates, on the other hand, what we have just stated. Thus, in *Lumen gentium* 30 it is pointed out that, in order for all the faithful to cooperate unanimously in the common enterprise, it is necessary "that all 'embracing the truth, shall grow in all ways in charity, reaching Him who is our head, Christ, by whom the entire body, connected and joined together by all the ligaments which unite and nourish it for the functioning itself of each member, grows and is perfected in Charity' (Eph 4:15–16)." The co-responsibility of the faithful in ecclesiastical communion, which this text therefore comes to indicate, should lead them to fulfill in a spirit of truth and charity the functions which are incumbent upon the mystical body of Christ. And clearly, no matter from what perspective this is considered, this speaks of a connection between obligations in relation to communion and diligent compliance with the duties toward the Church; and it explains why both prescriptions have been inserted into the same canon.

b) Canon 209 § 2, as we have seen at the beginning of this commentary, arises from the 1977 *schema* "De Populo Dei"; specifically, from c. 19 § 2, which reads: "Magna cum diligentia officia adimpleant quibus tenentur non tantum erga Ecclesiam Christi universam, sed etiam erga Ecclesiam particularem ad quam, secundum iuris praescripta, pertinent."[21]

The *coetus studiorum* "De Populo Dei," in its working session on October 18, 1979, was responsible for making the only substantial modification which stands out in this text, by replacing the expression "non tantum erga Ecclesiam Christi universam, sed etiam erga Ecclesiam particularem," for another, simpler one: "erga Ecclesiam tum universam, tum particularem," by means of which the impression of relegating the duties of the faithful within the particular Church to a secondary place was also avoided. In that same session, the *coetus* did not accept the position

20. Cf. M. Kaiser, "Die rechtliche Grundstellung...," cit., p. 175.
21. Cf. *Comm* 12 (1980), p. 80.

of the particular Church before the universal Church; nor did they agree to make an explicit reference to the parish in this prescription; and, even though it agreed to replace the term *officia* by the word *obligationes*, neither was this correction finally adopted in the 1982 *schema*, nor in the canon which was promulgated.[22]

The decision not to cite the parish expressly did not manage to justify itself in the journal *Communicationes*, in which the corrections and proposed changes we have just indicated were acknowledged. But this was probably due to the fact that the consultors felt that this reference, in addition to failing to suit the nature of the text, would be unnecessary, given that the parish should be considered already included within the particular Church. On the other hand, even though the parish undeniably has pronounced importance in the life of the Church, and the faithful have to make painstaking efforts in fulfilling their duties towards it, an exclusive citation could run the risk that this canon would be understood in a particularistic sense, to the detriment of other ecclesiastical institutions.

c) Canon 209 § 2, when stressing the duties which the faithful may have toward the Church, whether those that are strictly juridical in nature, or those which are exclusively moral in nature, does not modify in any way the proper obligation.

Above all, among those duties that stand out are those whose direct recipient is the Church, either in its universal or particular dimension, through its authorities and institutions. The canon has emphasized these duties, as against those duties of a more private nature that the faithful may have, even thought the latter ones are not to be entirely excluded from the scope of c. 209 § 2; since it seems clear that the diligent fulfillment of obligations of that kind should not cease to have repercussions, at least remotely, for the benefit of the entire Church.

Within the scope of this prescription those duties contained in the successive canons in this same title, common to all the faithful (cc. 210–211, 212 §§ 1 and 3, 222 and 223 § 1) can be placed in the foreground; as well as those which are specifically incumbent upon the laity (cc. 224–226, 229 § 1 and 231 § 1), upon clerics (cc. 273, 274 § 2, 275–277, 278 §§ 2 and 3, 279, 282, 284–287, 289), and upon religious (cc. 662–667 §§ 1–3, 668–672).[23] But c. 209 § 2 stresses, in addition, the fulfillment of many other duties alluded to in other places in the universal norms, even in the particular norms. These duties can vary greatly, and it is fitting to include among them those ranging from the concrete duties of each office to the general duty of compliance with the universal and particular laws prescribed within the first canons of the CIC.

22. Cf. ibid., pp. 80–81; CodCom, *Schema Novissimum...*, cit.
23. Cf. H.J.F. REINHARDT, commentary on cc. 209–223..., cit., p. 209/1.

Insofar as the norms which determine membership in a specific particular Church are concerned, cc. 100–107 (regarding domicile and quasi-domicile) and 111–112 (about the possible membership in rites other than Latin) are to be observed, as well as cc. 265–272 (pertaining to the incardination of clerics in a particular Church, personal prelature, institutes of consecrated life or of a society which enjoys the power of incardinating).[24] In regard to these latter canons, it should also be kept in mind that clerics incardinated in a diocese or personal prelature must respect the rights which fall within the competence of the local Ordinary in his territory (c. 297; cf. *PO* 10); and that members of religious institutes or societies of apostolic life, while they do not have rights and obligations deriving from the bond of incardination within the particular Church in which they live, are residents of the particular Church where the house to which they belong is located, in accordance with the criteria for domicile or quasi-domicile (c. 103).

24. Cf. J.H. PROVOST, commentary on c. 209, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 142.

210 **Omnes christifideles, secundum propriam condicionem, ad sanctam vitam ducendam atque ad Ecclesiae incrementum eiusque iugem sanctificationem promovendam vires suas conferre debent.**

All Christ's faithful, each according to his or her own condition, must make a whole-hearted effort to lead a holy life, and to promote the growth of the Church and its continual sanctification.

SOURCES: *LG* 39–42; *AA* 6

CROSS REFERENCES: cc. 96, 98, 199, 1° et 3°, 204 § 1, 208, 209, 211, 213–219, 221 § 1, 222–226, 229 § 1, 233 § 1, 275 § 1, 276, 387, 573 § 1, 574 § 1, 598 § 2, 710, 731 § 1

COMMENTARY

Daniel Cenalmor

1. The duty to strive to lead a holy life, to expand the Church and to promote its continual sanctification, as do all the duties and obligations in the canons in this title, bears a relationship to the principle of equality. This principle is specifically grounded in the vocation to sanctity of all baptized persons, which Paul VI came to recognize as "the most characteristic element, or, to put it another way, the ultimate end of the entire magisterium of the Council."[1]

"The vocation to sanctity is not the privilege of some, but a call to all, 'the same for those who belong to the Hierarchy as those who are instructed by them (*LG* 39).'"[2] "All the faithful, whatever their condition or state—though each in his or her own way—are called by the Lord to that perfection of sanctity by which the Father himself is perfect" (*LG* 11 c; cf. Mt 5:48), as Vatican II has unequivocally pointed out, thereby moving beyond the conception that sanctity is in general reserved for the religious and clerics; and thus confirming the "true equality" that exists among all the faithful by virtue of their regeneration in Christ.[3]

Canon 210, in reflecting this doctrine, which is present in the preaching and writings of numerous saints and spiritual authors from all eras, whether to a greater or lesser degree of clarity and insistence (let us re-

1. Cf. PAUL VI, mp *Sanctitas clarior*, March 19, 1969, in *AAS* 61 (1969), pp. 149–150.
2. J. MANZANARES, commentary on c. 210, in *Salamanca Com.*
3. Cf. G. FELICIANI, *Il popolo di Dio* (Bologna 1991), pp. 26–27.

call, to cite only a few names, St. Augustine, St. Thomas Aquinas, St. Francis of Sales and St. Teresa of Lisieux,[4] and more recently, in the continual preaching of the Blessed Josemaría Escrivá since 1928), places a strong emphasis on one of the more significant teachings of the last Council.

2. For some authors, the formulation of this prescription would have not turned out to be as completely satisfactory as they would have wished. For while c. 210 stresses that sanctity should be pursued by each "secundum propriam condicionem," it does not make clear that this is, at the same time, a single condition and that it does not consist in gradations according to the diverse conditions of life. The Constitution *Lumen gentium*, from this point of view, would be much more precise: it advises that sanctity is expressed in various forms according to the respective personal and existential condition, but also strongly insists that "una sanctitas excolitur ab omnibus" for any class of life and for any profession.[5]

Canon 210 was modified because of this lack of precision since one of its first versions in the *LEF* project: c. 11 of the 1969 and 1970 *schemata*, known as *Textus prior* and *Textus emendatus*. In fact, in regard to the wording of said canon ("Omnes christifideles in populo Dei congregati, quicumque sint, ad sanctam, pro propria quisque conditione, vitam ducendam atque ad Ecclesiae incrementum eiusque iugem sanctificationem promovendam vires suas conferre debent"), attention had already been called to the fact that the phrase "pro propria quisque conditione" assumed that, once it had established that everyone, without exception, is obligated to move towards sanctity, sanctity would not be the same for all, but rather that the condition of each of the faithful would reflect his or her own sanctity.[6]

In order to avoid misunderstandings, an easy solution would naturally have been to suppress these words. But the writers of the canon preferred to preserve them substantially and only modified the text so as to make it clearer. Thus, they arrived at the form "secundum propriam conditionem," contained in the text which was finally promulgated.

The decision to keep this phrase has been, on the other hand, justified by certain authors, who have explained that, if it were not for the determination which these words presuppose, the statement of duty to lead a holy life would be vague and lacking in force. Since sanctity does not exist in the abstract, but rather is lived in a concrete way, whenever the

4. Cf. J. DAUJAT, *La vita sopranaturale* (Rome 1958), pp. 561–573.
5. Cf. G. FELICIANI, *Il popolo...*, cit., p. 27.
6. Cf. P.-J. VILADRICH, "La declaración de derechos y deberes de los fieles," in REDACCIÓN IUS CANONICUM, *El proyecto de Ley Fundamental de la Iglesia* (Pamplona 1971), p. 128.

diverse demands which are imposed by one's own condition of life and personal vocation are satisfied, and therefore, one's own charismas and ministries.[7]

In any event, it seems clear that a reading of c. 210 should be understood as consonant with the doctrine of Vatican II regarding the universal call to sanctity to which we have alluded above. And, for this reason, the phrase "secundum propriam condicionem" should not be interpreted to the effect that there exist various degrees of sanctity, depending on diverse personal conditions, but rather that the teaching of the Council that "the classes and duties of life are many, but holiness is one—that sanctity which is cultivated ..." should always be observed (cf. *LG* 41 a).

3. The obligation to make a wholehearted effort to lead a holy life was adopted in a certain sense by *CIC*/1917, but only in regard to clerics, who, it is said, should lead a *greater holy* internal and external life than the laity (c. 124 *CIC*/1917); and the religious, who are required to order their life in accordance with the rules and constitutions of religion itself, and move towards sanctity in that way (c. 593 *CIC*/1917). Vatican Council II, and together with it, c. 210 of the *CIC*, when placing an emphasis on the universal vocation to sanctity and on the demands that the latter brings with it for all the faithful, can be assumed, for this reason, to constitute an obvious advance.

In any event, what we have just pointed out should not lead one to think that baptism is now the only recognized title by means of which the faithful must tend to sanctity; or that there exists a species of egalitarianism in this sense. Neither Vatican II nor the *CIC* have given rise to that.

In fact, in regard to priests, the Council itself has taught that even though it might be true that presbyters, "like all Christians ... have already received in the consecration of baptism the sign and gift of their great calling and grace, they are enabled and obliged even in the midst of human weakness (cf. 2 Cor 12:9) to seek perfection, according to the Lord's word: 'You, therefore, must be perfect, as your heavenly Father is perfect' (Mt 5:48). But priests are bound in a special manner to acquire this perfection. They are consecrated to God in a new way in their ordination and are made the living instruments of Christ the eternal priest, and so are enabled to accomplish throughout all time that wonderful work of His which with supernatural efficacy restored the whole human race" (*PO* 12 a).[8]

This same doctrine has been recalled again by Pope John Paul II, when he indicated that "What the Apostle Paul says of all Christians, that they must attain 'to mature manhood, to the measure of the stature of the fullness of Christ' (Eph 4:13), can be applied specifically to priests, who

7. Cf. G.F. GHIRLANDA, "Doveri e diritti dei fedeli nella communione ecclesiale," in *La Civiltà Cattolica* 136 (1985), p. 24.
8. Cf. PIUS XI, Enc. *Ad catholici sacerdotii*, December 20, 1935, in *AAS* 28 (1936), p. 10.

are called to the perfection of charity and therefore to holiness, even more so because their pastoral ministry itself demands that they be living models for all the faithful" (*PDV* 72).

Also the *CIC*, consonant with what has been stated, has expressed it even more clearly, when it points out that clerics "have a special obligation to seek holiness in their lives, because they are consecrated to God by a new title through the reception of orders, and are stewards of the mysteries of God in the service of His people" (c. 276 § 1). Thus, it cannot be said any longer that they are obligated to lead a more holy life than the laity, since, as of Vatican II, it has become clear that in regard to sanctity, all the baptized are equal, even though that sanctity may be expressed in multiple ways. What is simply indicated is that all clerics are called to sanctity, in addition to baptism, through a new title that has been added above, such as the sacrament of orders.[9]

It can be concluded from the preceding discussion that, even though there may exist a fundamental obligation for all the faithful to make a wholehearted effort to seek sanctity in their own condition of life, by virtue of baptism (cf. *LG* 42 e), this can also be done with other titles, as with the reception of sacred orders (c. 276 § 1) or the concurrence of given charisms, from which emerge special obligations in regard to sanctity[10] without this detracting in any way from the common call to a single sanctity, which is the most fundamental and to which c. 210 has devoted itself for that reason.

4. Canon 210 has been applauded for including in its text, not only the obligation to reach sanctity in its formula, but also the obligation to strive to increase the Church and to promote its continual sanctification. This, as some authors have observed, has been, in effect, an absolutely correct response, since "the personal sanctity of the faithful and the increase in sanctification of the entire Church are closely linked. In reality, they are the same thing, seen from two perspectives. If the Church is a saving community, it is so because the faithful achieve sanctity and sanctification at its heart."[11]

The personal sanctification and struggle to corroborate their faith with those who already believe in Christ, and in order to draw to Him those who are still far away, are two essential aspects of the mission of the Church, to which all the faithful are equally called.[12] Additionally they are mutually related, since the baptized cannot be led towards sanctity if they do not respond to the divine vocation that calls upon them to apply all

9. Cf. T. RINCÓN, commentary on c. 276, in *Pamplona Com.*
10. Cf. J.H. PROVOST, commentary on c. 210, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 143.
11. P.-J. VILADRICH, "La declaración de derechos y deberes...," cit., p. 129.
12. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos* (Pamplona 1991), pp. 40–45.

their powers "to the building up of the Church and to its continual sanctification" (*LG* 33). In addition to this, it should not be forgotten that the growth of the Church takes place insofar as the faithful fulfill the fullness of the Christian life and the perfection of charity in their personal existence.[13]

5. The obligation to move towards sanctity is, above all, a moral duty,[14] the supreme moral duty, as Catholic doctrine has taught.[15] It is only a juridical duty to the extent that justice legally requires it (which demands that the laws of the Church be obeyed), insofar as participation in the sacraments and other means of salvation are concerned,[16] when performing the other duties prescribed by the Church, such as those which involve each one's condition of life or the exercise of various ministries. For this reason, it may seem strange that this general obligation has been adopted in the *CIC*, given that these specific juridical duties have already been dealt with in the relevant norms. However, this fact can be explained if we consider that the duty to strive to reach sanctity and to increase the Church and to promote its continual sanctification constitutes a primary duty,[17] in which are grounded not only many juridical obligations, but also the true and inherent rights specified in the successive canons under this same title, such as that of exercising the apostolate (cc. 211, 216), receiving the assistance of spiritual goods from sacred pastors (c. 213), worshipping God according to their own rite and their own spirituality (c. 214), receiving a Christian education (c. 217) and freely choosing one's state in life (c. 219). In effect, all these rights can be explained in light of the personal vocation to sanctity for each of the faithful, and, for this reason, the Legislator cannot do less than recall the obligation to strive to achieve it.[18]

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13. Cf. G. FELICIANI, *Il popolo...*, cit., pp. 27–28; *LG* 40.
14. Cf. CodCom, "Relatio super priore schemate LEF," p. 80, in *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972), p. 578.
15. Cf. J. HERVADA, commentary on c. 210, in *Pamplona Com.*
16. Cf. G.F. GHIRLANDA, "Doveri e diritti...," cit., p. 27; E. CORECCO, "Il catalogo dei doveri-diritti del fedele nel CIC," in *I diritti fondamentali della persona umana e la libertà religiosa. Atti del V Colloquio Giuridico (8-10.III.1984)* (Rome 1985), p. 115.
17. Cf. ibid.
18. Cf. G. FELICIANI, *Il popolo...*, cit., p. 28.

211 Omnes christifideles officium habent et ius allaborandi ut divinum salutis nuntium ad universos homines omnium temporum ac totius orbis magis magisque perveniat.

All Christ's faithful have the obligation and right to strive so that the divine message of salvation may more and more reach all people of all times and all places.

SOURCES: *LG* 17; *AG* 1, 2, 5, 35–37

CROSS REFERENCES: cc. 96, 98, 199, 1° et 3°, 204 § 1, 208–210, 212–217, 221 § 1, 222–226, 229, 275, 276 § 1, 394, 673, 675 § 1, 713, 722 § 2, 735 § 3, 756–759, 771, 774, 781–783, 787, 793 § 1, 822, 872, 1136

COMMENTARY

Daniel Cenalmor

1. The apostolate, in addition to being an obligation for all the faithful, as can be inferred from the preceding canon, is an authentic right: a *ius nativum* which does not arise from a concession of the Hierarchy nor from a mission granted by it—even though it is exercised under the general jurisdiction of the competent ecclesiastical authority. Rather, it depends on a true divine vocation which encompasses all the faithful.[1]

In fact, as Vatican Council II has taught when speaking of the laity, but in a general sense that can be applied to any member of the people of God,[2] all obtain the right and the duty to the apostolate from the same Christ through the sacraments of baptism and confirmation; since "inserted as they are in the Mystical Body of Christ by baptism and strengthened by the power of the Holy Spirit in confirmation, it is by the Lord himself that they are assigned to the apostolate" (*AA* 3 a; cf. *LG* 33).

Baptism does not only presuppose a grace, but is also a divine call to participate in the redeeming mission of Jesus Christ. "Through baptism, all people become a participant in the prophetic, priestly and kingly ministry of Christ, and for this reason, and inseparable from that dignity, the duty to continue this ministry in the world is incumbent upon all until the

1. Cf. St. JOSEMARÍA ESCRIVÁ DE BALAGUER, *Conversaciones Con Mons. Escrivá de Balaguer* (Madrid 1986), no. 21; A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos* (Pamplona 1991), pp. 117–118.

2. Cf. G. FELICIANI, *Il popolo di Dio* (Bologna 1991), p. 29.

Kingdom of God has achieved its fullness."[3] And, also through baptism, people have the right to participate actively, within the sphere of freedom that Christ has indicated, in the apostolic mission of the Church, by virtue of the fact that that same Lord has assigned this mission to him.[4] This right to the apostolate, since it derives immediately and directly from the ontological-sacramental condition of the faithful, can be considered an innate or fundamental right of the latter for this reason.Therefore it has no need of any mandate or authorization from the Hierarchy to be exercised,[5] although it is within the purview of the authority of the Church to moderate it (c. 223 § 2).

2. The right of all the faithful to the apostolate is truly juridical, because the apostolate has an external and inter-subjective dimension granting the faithful the right *erga omnes* to be respected in the legitimate undertaking of their apostolic activity. It is thus understood that we may speak of a series of duties of the Hierarchy correlative to this right, which Vatican II has managed to define in relation to the apostolate of the laity: the Hierarchy should support it, lend it the necessary spiritual assistance, order the development of the apostolate toward the common good of the Church, and be vigilant that the doctrine and order are kept (*AA* 24).[6]

The apostolate of the faithful, insofar as it is a general duty, is, instead, of a moral nature, since in and of itself, it is a duty in regard to Christ, which depends, in addition, on the expansion and the intensity of the graces and gifts which the Spirit distributes to each one (cf. 1 Cor 12:11).[7] The preceding notwithstanding, this does not prevent this duty from managing to acquire juridical force, whenever other factors are present that are superimposed on the condition of the faithful that entail a relationship of justice, as in the case of the duty of Christian parents or that of those who act in their place, and even of godparents, to educate their children and godchildren in the faith (cc. 226 § 2, 774 § 2, 793, 872).[8]

In regard to this, it is appropriate to add that, even though the duty to the apostolate may not usually be juridical, it does not, for this reason, cease to have relevance before the law of the Church. To the contrary, its actual objectification is reflected in the right itself to the apostolate, since to the degree that one becomes aware that the apostolic mission has been entrusted by Christ to all the faithful, the need to observe it, to favor it, and to promote it, also comes to be understood as aspects comprising the right under discussion.[9]

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3. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 117.
4. Cf. ibid., pp. 117–118.
5. Cf. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), p. 128.
6. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 118.
7. Cf. ibid.
8. Cf. J. HERVADA, *Elementos de...*, cit., pp. 127–128.
9. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 118.

3. The right-duty to the apostolate stated in c. 211 can be considered, in the first place, as a specific right-duty to the personal apostolate, which can likewise be preached to all the baptized. This right-duty has highly varied manifestations, such as, for instance, the personal testimony which is born innately from living in accordance with the Gospel, or participation in a Christian education; and it can be exercised both in an individual, as well as a collective, way.[10] But it responds, in any case, to the same title: the call that all the faithful receive at baptism to participate in the redemptive mission of Christ and of his Church.

Canon 211 also accepts, however, in another, broader sense, the generic right-duty that all the faithful possess to participate in the mission of the Church. The distinct duties and rights of the apostolate, inherent to the state of the faithful (cf., for example, for the laity, cc. 225 and 226), are grounded in this duty-right, including any apostolic action. Thus, from this perspective, certain authors have framed the duties and rights relative to the proclamation of the Gospel within the scope of this prescription, in which the combination of other titles, superimposed over the common state of the faithful, such as those deriving from the holy orders, gives rise to an obvious diversity (cc. 756–759).[11]

In all other respects, the common character of the right-duty adopted in this norm, whether understood in its widest sense or in its more specific context, we believe has been ratified by the canonical drafting process itself. In fact, in regard to c. 12 of the *Textus prior* and the *Textus emendatus* of the *LEF* ("Omnes christifideles officium habent et ius adlaborandi, pro sua quisque conditione, ut divinum salutis propositum ad universos homines omnium temporum et ubique terrarum magis magisque perveniat"), from which c. 211 derives, an author noticed that the clause "pro sua quisque conditione" would not be consistent with the principle of equality, since it would assume that there were as many classes of the right-duty to the apostolate as there were classes of states of the faithful.[12] For this reason, the elimination of this particular clause in the following *schemata* of the *LEF* seems to us to have confirmed how the right-duty adopted in this norm ought to be considered, in any event, as truly common to all the faithful, even though each must fulfill it in his own or her own way, according to the plurality of gifts.[13]

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10. Cf. J. HERVADA, *Elementos de...*, cit., pp. 127–128.
11. Cf. J. H. PROVOST, commentary on c. 211, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 144; G. F. GHIRLANDA, "De obligationibus et iuribus christifidelium in communione ecclesiali deque eorum adimpletione et exercitio," in *Periodica* 73 (1984), p. 351; H.J.F. REINHARDT, commentary on cc. 209–223, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1987), p. 211/1.
12. Cf. P.-J. VILADRICH, "La declaración de derechos y deberes de los fieles," in REDACCIÓN IUS CANONICUM, *El proyecto de Ley Fundamental de la Iglesia* (Pamplona 1971), p. 131.
13. Cf. ibid.

4. The right-duty to the apostolate, as with all the other duties and rights existing in the Church, should be always be fulfilled in communion with the Pastors and with the other faithful (see commentary on c. 209 § 1). "Nothing could be farther from the true apostolate than an anarchic act, distanced from ecclesiastical communion, from which the guarantee of effectiveness and rectitude is obtained. But it should be stressed at the same time that this requirement of unity in no way implies the need or appropriateness of channeling the apostolic action of each and every one of the faithful into *denominational* Catholic forms and structures; much less could it justify the attempt on the part of any person to claim for oneself the right of *monopoly* or of exclusive apostolic activity in apostolate fields that belong to the competence inherent to all the faithful."[14] The right of the Hierarchy to coordinate, to guide the totality of apostolic action towards the common good, should not mean a restriction on the legitimate and responsible spontaneity of the faithful. Instead, it should try to use the multiform apostolic possibilities that are found in the people of God to the best advantage possible.[15]

14. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 119.
15. Cf. ibid.

212 **§ 1. Quae sacri Pastores, utpote Christum repraesentantes, tamquam fidei magistri declarant aut tamquam Ecclesiae rectores statuunt, christifideles, propriae responsabilitatis conscii, christiana oboedientia prosequi tenentur.**

§ 2. Christifidelibus integrum est, ut necessitates suas, praesertim spirituales, suaque optata Ecclesiae Pastoribus patefaciant.

§ 3. Pro scientia, competentia et praestantia quibus pollent, ipsis ius est, immo et aliquando officium, ut sententiam suam de hisquae ad bonum Ecclesiae pertinent sacris Pastoribus manifestent eamque, salva fidei morumque integritate ac reverentia erga Pastores, attentisque communi utilitate et personarum dignitate, ceteris christifidelibus notam faciant.

§ 1. Christ's faithful, conscious of their own responsibility, are bound to show Christian obedience to what the sacred Pastors, who represent Christ, declare as teachers of the faith and prescribe as rulers of the Church.

§ 2. Christ's faithful are at liberty to make known their needs, especially their spiritual needs, and their wishes to the Pastors of the Church.

§ 3. They have the right, indeed at times the duty, in keeping with their knowledge, competence and position, to manifest to the sacred Pastors their views on matters which concern the good of the Church. They have the right also to make their views known to others of Christ's faithful, but in doing so they must always respect the integrity of faith and morals, show due reverence to the Pastors and take into account both the common good and the dignity of individuals.

SOURCES: § 1: c. 1323; *LG* 25, 37; P0 9
§ 2: c. 682; *IM* 8; *LG* 37; *AA* 6; P0 9; *GS* 92
§ 3: *IM* 8; *LG* 37; *AA* 6; *PO* 9; *GS* 92

CROSS REFERENCES: cc. 57, 59–61, 96, 98, 127 § 3, 190 § 2, 199, 1° et 3°, 204, 208–211, 213–224, 227, 228 § 2, 273, 274 § 2, 341, 384, 455, 466, 474, 618, 628 § 3, 630 § 5, 678, 750–754, 978 § 2, 1371, 1749

COMMENTARY

Daniel Cenalmor

The three paragraphs of this norm, conceived from the beginning from a single canon of the *LEF* and, above all, drawing their inspiration from *Lumen Gentium* 37, refer to the relationship between the faithful and their Pastors; and they discuss, in succession, the duty of obedience and the rights of petition and of opinion. It is absolutely correct that these three duties and rights are found together in this canon, since they pertain, not only to those of the faithful who lack power, but also to those who form part of the Hierarchy of the Church. Since "those who preside also ought to obey those who stand above them in the hierarchical order, and, first and foremost, they always ought to bend their actions to the will of Jesus Christ whose representatives they are,"[1] this same line of reasoning could similarly be extended to the rights of petition and of opinion.

1. *The duty of obedience to pastors* (c. 212 § 1)

a) The fundamental duty of the Christian to keep communion with the Church always entails the obligation, not only moral, but also juridical, to obey the Hierarchy;[2] since the *communio ecclesiastica*, or the bonds of the people of God, include the *communio hierarchica*,[3] and it is clear that "the duty of obedience of the faithful to the Pastors in a strict sense is one of the juridical bonds comprising the communion of governance."[4]

This obligation—which Hervada includes among those duties arising from the *conditio subiectionis* of the faithful[5]—was described in the Council in the following terms: "The laity, as all the faithful, must accept promptly and with Christian obedience those things that the sacred Pastors, insofar as they are representatives of Jesus Christ, state as teachers and rulers of the Church" (*LG* 37 b, *PO* 7 b). Additionally c. 212 § 1 has adopted this in nearly the same language since its first *schemata*, which has barely undergone any variation whatsoever.

1. A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos* (Pamplona 1991), p. 109. Cf. PAUL VI, "Allocution of December 2, 1965," in *L'Osservatore Romano*, December 3, 1965, p. 1; H. JEDIN, "Storia e crisi della Chiesa," in *L'Osservatore Romano*, January 15, 1969, p. 5.
2. Cf. G. FELICIANI, *Il popolo di Dio* (Bologna 1991), p. 32.
3. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), p. 144.
4. P.-J. VILADRICH, "La declaración de derechos y deberes de los fieles," in REDACCIÓN IUS CANONICUM, *El proyecto de Ley Fundamental de la Iglesia* (Pamplona 1971), p. 135.
5. Cf. J. HERVADA, *Elementos de...*, cit., pp. 143–147.

In effect, in regard to c. 13 § 1 of the *Textus prior* of the *LEF*, the text which indicated "Quae sacri Pastores, utpote Christum repraesentantes, tanquam fidei magistri declarant aut tanquam Ecclesiae rectores statuunt, christifideles christiana oboedientia voluntaria et responsabili sectari tenentur, ad normam sacrorum canonum," in the version of the *Textus emendatus* only the phrase "propriae responsabilitatis conscii" was replaced by the expression "voluntaria et responsabili." Since that *schema*, the only change worthy of note consisted in suppressing the last words of the text: "ad normam sacrorum canonum," whose purpose was to highlight the juridical obligation to obey, which was upheld only in regard to the Pastors themselves, and to point out at the same time that different modalities fall within the scope of this obligation.[6] This suppression, without contradicting what we have just said, serves to stress, on the one hand, the fundamental nature of this duty; while, on the other, even though at times there may not have existed a juridical obligation to obey, on the contrary, there could indeed exist a moral obligation in many cases.

b) Christian obedience, as prescribed by the Council and by c. 212 § 1, constitutes obedience which, since it must be requested and given within the freedom of the children of God, cannot simply be mechanical or passive; but, much to the contrary, demands full consciousness of the dignity of baptism and, therefore, of personal and ecclesial responsibility.[7] Thus, the words "propriae responsabilitatis conscii," which, in addition to stressing that one should not obey simply because one is so ordered, imply that obedience of the faithful to their Pastors should include personal initiative, when the order allows scope for it. In other words, when what is ordered is legitimate, it must be obeyed in a spirit of collaboration.[8] This obedience must always be given, although, in some cases, the interior attitude of those exercising power does not respond to the function of service which must be exercised, since it is not grounded either in the attitudes of mind or in the personal virtues of those who rule, but instead in the hierarchical constitution of the Church itself as desired by God.[9]

In order to make it easier to exercise this obligation, with all its qualities, the authority of the Church ought to rule in such a manner that the due respect that is owed should not be disproportionately burdensome for the faithful. It is entirely proper that it has been said, for this reason, that "the faithful have a right to be well governed by those who, in turn, have a right to be well obeyed."[10] In this sense, it is fairly significant that

6. Cf. CodCom, "Relatio super priore schemate LEF," in *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972), p. 579.
7. Cf. G. FELICIANI, *Il popolo...*, cit., p. 32.
8. Cf. J. HERVADA, commentary on c. 212, in *Pamplona Com.*
9. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 109–110.
10. Cf. J. HERRANZ, "De principio legalitatis in exercitio potestatis ecclesiasticae," in *Acta Conventus Internationalis Canonistarum* (Vatican City 1970), p. 224.

the Council, after affirming the duty of obedience to the Hierarchy, has immediately added that the sacred Pastors, in turn, ought to recognize and promote the dignity and responsibility of all the faithful in the Church. Following the 6° and 7° guidelines on the revision of the *CIC*, they should insist on the need to provide adequate procedures to safeguard those subjective rights, by furnishing a system of legal recourse, through administrative as well as judicial channels, which would allow the faithful to defend themselves through institutionally established channels against the acts of authority which they judge to be injurious to their own rights."[11]

c) The duty of obedience to the Pastors, insofar as it is a juridical duty, can only be demanded when the sacred Pastors, in addition to serving as such—that is, insofar as they are representatives of Christ—have power over those faithful, and when what has been ordered falls under the legitimate scope of the exercise of the offices of teaching and ruling for which they are responsible.[12]

On the other hand, it is obvious that the Fathers of Vatican II have not asked for the same kind of obedience in regard to the traditionally called powers of magisterium and jurisdiction. "According to the entire body of ecclesiological and canonical doctrine, as soon as this jurisdiction consists, in fact, of the power to rule, that is, power over behavior, magisterium instead is linked to faith, to the extent that faith consists of believing in the testimony of another, and magisterium means that the Pastors testify about Christian faith and message."[13]

d) Insofar as the Magisterium specifically is concerned, the moral and juridical duty of adhering to it arises only to the extent that it affects communion with Peter's successor, and that it refers to matters of faith or morals. Such an obligation, therefore, assumes various gradations according to whether it involves episcopal or pontifical teachings, of an infallible nature or not, according to the various modalities specified by the Council and recognized in cc. 749–754.[14]

The delicate problem of the limitations on the freedom of investigation and theological opinion and the so-called "right of dissension" are located within this context. It should not be forgotten that Catholic theologians are, first and foremost, members of the Church; and thus they cannot, therefore, claim for themselves a statute which would exonerate them from the duty of adhering to the magisterial teaching which is in-

11. Cf. *Preface*, in *Pamplona Com*, p. 55; A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 110–111.
12. Cf. G. FELICIANI, *Il popolo...*, cit., p. 32; J.H. PROVOST, commentary on c. 212, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 145.
13. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 111.
14. Cf. G. FELICIANI, *Il popolo...*, cit., p. 32.

cumbent upon all the faithful,[15] nor from invoking a hypothetical right, since that dissension or public attitude of opposition to the Magisterium presupposes an act of behavior against due communion which all members of the people of God ought to keep.[16] All of this does not mean, however, that there does not exist a just freedom of theological investigation (see commentary on c. 218).

e) Insofar as commands given by the authority in regard to the power of governance or jurisdiction are concerned, it should be kept in mind that the corresponding obligation of obedience, since it does not depend on a dominative power, does not penetrate into the private sphere of the person, but only on external intersubjective relations and on that which involves the common good. It can be thus inferred that the function of the Hierarchy within this framework should also respect certain boundaries, among which could be singled out those delineating the sphere of temporal matters and the private sphere, properly speaking,[17] in addition to whatever may be contrary to divine, natural or positive law, or that which exceeds the field of competence of whoever has issued the command.[18]

Within the sphere of the temporal, the actions of the Hierarchy ought to be limited to fulfilling its magisterial mission of proposing principles and of forming the conscience of the faithful, so that they can be the ones who, freely and responsibly—as the Council has taught—make those decisions which each specific case may require,[19] thereby acknowledging "the just liberty which belongs to everyone in earthly society" (*LG* 37 c; *PO* 9 b). This freedom constitutes a true subjective right of the faithful and a limitation on ecclesiastical power, which does not penetrate directly into the sphere of temporal matters.[20]

Insofar as the private sphere is concerned, it encompasses the personal arena, incapable of being communicated, as well as the functions of community dimension which do not exceed the limits of private autonomy. In fact, the personal initiative and responsibility of the latter, insofar as they are functions lacking in public and official status, are also incumbent upon the faithful, even though they may be performed collectively.[21]

Finally, it is appropriate to point out that, in regard to this subject, for all those cases involving true commands from the Hierarchy, the latter should be "capable of being confirmed in juridical terms, so as to embody

15. Cf. ibid., pp. 32–33.
16. Cf. J.A. FUENTES, "El derecho a recibir y a transmitir el mensaje evangélico. A propósito de la instrucción sobre 'la vocación eclesial del teólogo'," in *Fidelium Iura* 3 (1993), p. 445.
17. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 112.
18. Cf. J. HERVADA, *Elementos de...*, cit., p. 145.
19. Cf. *LG* 36 and 37; *GS* 33, 36, 43, 76 and 91; *CD* 12 and 19; *PO* 4, 6 and 9; *AA* 5, 7 and 24; etc.
20. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 112–113.
21. Cf. ibid., p. 113.

in them the certainty and security—on behalf of the party who is obligated to obey and of third parties—demanded by the law in regard to the existence of the command as well as to its binding force and content."[22]

2. *The right of petition* (c. 212 § 2)

a) The power of the Hierarchy to preside over the faithful in the name of God is given for the building up of the entire mystical body of Christ.[23] For this reason, it can be explained that the relationship of subjection between the faithful and their Pastors—from which derives the duty of obedience—is qualified by a dimension of service, in particular stressed by the last Council.[24]

One of the obligations of the Hierarchy, arising from the relationship of subjection and qualified by a dimension of service, is that of attending to the concerns or petitions of the faithful's solicitude, which they believe, above all, to be necessary or appropriate in order to satisfy the demands of their Christian vocation and of their specific ecclesial function.[25] It is an obligation ultimately intended to promote the duty of all baptized persons to lead a holy life and to promote the growth of the Church and its continual sanctification (c. 210). It is an obligation which pertains to the right of the faithful to "express their needs, primarily spiritual ones, and their wishes to the Pastors of the Church," which is discussed in the paragraph which is now the subject of our commentary.

b) The original expression "integrum est" appearing at the beginning of § 2 indicates that the obligation of the Pastors to attend to the the requests of the faithful is truly one of justice. For this reason, we can correctly speak about a correlative right of the faithful, properly emphasized, furthermore, when introduced into this title of the *CIC* because, without a free and trusting dialogue with the Pastors, the teachings of Vatican II about the dignity and co-responsibility of all the baptized can neither be fully effective nor can those "family relations" emerge, which are indispensable for the Church so as to be able to develop its action effectively in the world (cf. *LG* 37 d).[26]

The doctrine has called this right the right of petition, in a technical and synthetic manner,[27] although its content is, in reality, much broader,

22. Ibid., p. 114.
23. Cf. Col 2:19; Eph 4:1–16.
24. Cf. M. LÖHRER, "La gerarchia al servizio del popolo cristiano," in *La Chiesa del Vaticano II* (Rome 1965), pp. 699–712.
25. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 139.
26. Cf. G. FELICIANI, *Il popolo...*, cit., p. 35.
27. Cf. P.-J. VILADRICH, "La declaración de derechos y deberes...," cit., p. 136.

since each of the faithful ought to have the possibility of seeking recourse to the ecclesiastical authority, not only to express requests that require a concrete response, but also simply to present wishes or difficulties in regard to the life of the Church which are demanding specific attention. Otherwise, there could not occur this free and trusting dialogue with the Pastors which we have just mentioned.[28] In addition to this, the sources cited for this canon are fairly expressive in this respect.

Furthermore, it can be deduced from these same sources that parish priests (cc. 515 § 1, 519), quasi-parish priests (c. 516 § 1),[29] and in general, all those sacred ministers who fulfill a pastoral function should be included among the Pastors of the Church, in addition to the Pope and the bishops, and those who collaborate with them in governance of the various ecclesiastical divisions.

c) The right of petition can be exercised either orally or in writing, on an individual as well as a collective level.[30] It accepts a wide range of specific manifestations and tonalities, which run the gamut from pastoral attention that takes into account the specific needs of each of the faithful, considered on an individual basis, or of associations of which the faithful are comprised, up to the petition of a rescript requesting grace provided under the law (c. 36). On the other hand, this right entails, at a minimum, the obligation of the Pastors of the Church to listen to the wishes and personal initiatives of the faithful and to receive and study their petitions.[31] All of this should be done, as the Council has recommended, with attention and "paternal love" (*LG* 37 c).

It has been pointed out that, although the right of petition, properly speaking, does not naturally assume an obligation to grant the petition (except when what has been demanded involves a true right, in the strict sense, in which case it extends beyond the limits of a simple petition[32]) this right "would remain deprived of content if, on the part of the authority, an obligation—juridically demandable—did not follow, which required that it duly weigh the petition and accord it the most just response or, if it involved matters of a discretional nature, the most suitable response."[33] And thus, the proper exercise of this right would also imply "obtaining a concrete response—affirmative or negative—on the part of the ecclesiastical authority who has such jurisdiction, accompanied, in turn, by those reasons supporting any denial; in such a manner that, whosoever would

28. Cf. G. FELICIANI, *Il popolo...*, cit., p. 35.
29. Cf. H.J.F. REINHARDT, commentary on cc. 211–223, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1987), p. 212/2.
30. Cf. J. HERVADA, *Elementos de...*, cit., p. 145.
31. Cf. ibid.; A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 139–140.
32. Cf. J. HERVADA, *Elementos de...*, cit., p. 145.
33. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 140.

deem it appropriate could have recourse to a higher level of the Hierarchy, in order to obtain that which perhaps may have been unlawfully denied him."[34]

At this moment in time, however, there still does not exist in the Church the possibility of demanding such intervention from the Pastors in all cases. This is done, among other reasons, because of the genuine justifiable impossibility of attending to all petitions that exists in some particular churches, which include millions of faithful.[35] Perhaps for this reason, the *CIC* has not formally demanded compliance with this obligation up to this point.

3. *The right of opinion in the Church* (c. 212 § 3)

a) Since there exists a natural right of all persons to seek the truth freely and to express their opinion, in keeping with the moral order and the common good,[36] there also exists the right of the faithful, and on certain occasions, the duty, of formulating correctly and expressing their own opinion about those issues in the life of the Church which have not yet been definitively resolved by the ecclesiastical authority. This is a right grounded, in the first place and as a distant source, in the same natural right to which we have just referred, and to a closer degree, it is grounded in the active participation of all the faithful in the mission of the people of God, in regard to which there exists a *vera aequalitas*, in the *sensus fidei* and in genuine charisms. From this emerges the legitimate right to exercise them within the Church and in the world (cf. *LG* 12; *AA* 3 d).[37]

This right was declared by Vatican II in the following words: "By reason of the knowledge, competence, or pre-eminence which they have the laity are empowered—indeed sometimes obliged—to manifest their opinion on those things which pertain to the good of the Church. If the occasion should arise this should be done through the institutions established by the Church for that purpose and always with truth, courage and prudence and with reverence and charity toward those who, by reason of their office, represent the person of Christ" (*LG* 37 a). Canon 212 § 3 has adopted this, by partially repeating this teaching of the Council, but at the same time, making it clear that this involves a right, and not a simple power, with the recognition that it is expressly held, not only in the presence of the Hierarchy, but also in the presence of the remainder of the faithful.[38]

34. Ibid.
35. Cf. G. FELICIANI, *Il popolo...*, cit., p. 36.
36. Cf. JOHN XXIII, Enc. *Pacem in terris*, April 11, 1963, in *AAS* 55 (1963), p. 260.
37. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 144–145.
38. Cf. G. FELICIANI, *Il popolo...*, cit., p. 36.

b) The right of opinion in the Church assumes the freedom to formulate one's own opinion on those matters which have not been authentically defined by the ecclesiastical Magisterium, leading us to postulate the existence of a right to information within the Church.[39]

The *CIC* has not adopted this last right, despite the valuable suggestions of some authors to this effect,[40] perhaps because it is not easy to formalize. In fact, some sectors in the doctrine espousing it, as they conceive of it, have made it difficult to reconcile with the nature of the Church, by making it too similar to the corresponding right which is currently in effect in democratic countries. However, correct formalization of this right is, of course, possible.

In any event, when speaking of this right to information, we can say that it would be grounded in the active participation of the faithful in the life of the Church. Its object would be only those matters which pertain to external and social activities, not to personal and private activities, nor those which *natura sua* belong to the internal scope of conscience. The corresponding duty to inform would fall on the Hierarchy, and to the extent that it were to affect the common good, on institutions and extraordinary members of the faithful. Its limitations would be delineated by the faithful's interest in being informed—linked to one's degree of effective participation in the life of the people of God—and by the common good of the Church.[41]

c) Returning to the right to express one's own opinion, it can be said that it requires due information as a specific prerequisite for its proper exercise—to which the canon implicitly refers through the use of the words *scientia* and *competentia*—because without this, it would not be possible to formulate one's own opinion well, nor to participate adequately in the life of the Church.[42]

The fact that the right of opinion depends on *scientia*, *competentia* and also on the *praestantia* of each person—as this norm indicates and as the Council has taught—does not work to the detriment of its common nature nor against the fundamental equality of the faithful, since "insofar as matters involving the formulation of judgment in relation to the good of the Church and of its expression are concerned (inherent to *knowledge* and *competence* in the subject now under discussion), the laity have the same rights and duties as clerics and religious. The same thing can be said of *praestantia*, of prestige; it consists of a position of moral preeminence,

39. Cf. J. HERVADA, *Elementos de...*, cit., p. 142.
40. Cf. G. FELICIANI, *Il popolo...*, cit., p. 37; "Lex Ecclesiae Fundamentalis. Bericht über die Arbeitsergebnisse eines Kanonistischen Symposions in München 1971," c. 20, in *Archiv für katholisches Kirchenrecht* 140 (1971), p. 433; P.-J. VILADRICH, "La declaración de derechos y deberes...," cit., p. 158; J. HERVADA, *Elementos de...*, cit., p. 142.
41. Cf. J. HERVADA, *Elementos de...*, cit., p. 142.
42. Cf. ibid.

a social value, and one who possesses it exerts an influence by inducing other members of that community to act. Thus, from this vantage point, a sense of responsibility emerges, because one's actions, omissions, and opinions can exert a real force influencing the conduct and the decisions of the community and of the authority."[43] Also, if there exists a sense of responsibility, there is also a right, and even a duty, to support what one believes is good for the Church and to state whatever one believes is contrary to the good of the people of God.[44]

In summary, knowledge, competence, and authority are prerequisites that have an effect on the proper exercise of this right. They cause the moral duty to communicate one's own opinion to the ecclesiastical authority or to the other faithful to have greater or lesser force.[45]

d) Furthermore, legitimacy in exercising the right of opinion is subject to other prerequisites, summarized by Vatican II as truth, fortitude, and prudence, and as reverence and charity toward the Hierarchy (cf. *LG* 37 a), among which, however, only truth, prudence and reverence have juridical relevance, expressed in the language of the canon by means of these words: "salva fidei morumque integritate ac reverentia erga Pastores, attentisque communi utilitate et personarum dignitate."[46]

Although these prerequisites should always be satisfied, the Latin version of the canon seems to urge us in particular in those cases in which one's personal opinion is stated in the presence of the faithful that does not pertain to the Hierarchy. This is understandable, since, while it is indeed true that "integrity in faith and in customs is an unconditional limit (there is no free speech on matters of faith or morals authentically taught by the Magisterium, according to the varying degrees of their obligatory nature)"[47] and that reverence towards the Pastors, the common purpose and respect for the dignity of persons shape the proper exercise of this right in all cases, it should not be forgotten that the possibility of creating an uproar should also be kept in mind as one of the limitations on this right.[48] And it is logical that, in general, this danger would be ever greater whenever erroneous, irreverent or reckless opinions are expressed to the faithful, who lack the formation that in principle would be presumed for the sacred Pastors.

e) Prudence should also be exerted when choosing the channels through which to exercise this right, whenever opinions are expressed before the Hierarchy as well as before the other faithful. In fact, it would convey a lack of responsibility and prudence, for example, to choose a

43. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 145–146.
44. Cf. ibid., p. 146.
45. Cf. J. HERVADA, commentary on c. 212, in *Pamplona Com.*
46. Cf. J. HERVADA, *Elementos de...*, cit., p. 141.
47. J. HERVADA, commentary on c. 212, in *Pamplona Com.*
48. Cf. J. HERVADA, *Elementos de...*, cit., p. 141.

means of generalized dissemination to express opinions that could be misinterpreted by those faithful who did not possess sufficient formation. This does not mean, however, that the exercise of this right should be restricted to a very few pre-established channels, since an appropriate venue to express one's own personal opinion might well be the diocesan pastoral council, a column in the newspaper or a simple personal letter from one of the faithful to one's bishop, provided that due measures of prudence are observed. The regulation of the exercise of this right, therefore, should be open to public governance[49] as well as the private governance of expression.[50]

f) The right to opinion obviously entails the corresponding right of the Hierarchy to facilitate those channels of expression and to attend to the opinions expressed to them by the faithful, and even the right of the Pastors to make use of the "prudent counsel" of the faithful (cf. *LG* 37 c). At least, this is a duty that, as one author has remarked, should be recalled to mind, since it is not just a moral obligation, as can be deduced from the caution expressed on the part of the Council and of the *CIC* itself, of various entities of a consultative nature, open to collaboration by laypersons, clerics and the religious.[51]

Finally, we should point out that coordination between the rights of petition and of opinion, and the duty of obedience allows us to speak about a right to *remonstratio*; that is, about the right which allows us to seek reconsideration from ecclesiastical authority of those norms of purely ecclesiastical law that are considered to be difficult to adapt to the circumstances of time and place of their intended recipients.[52]

49. J.H. PROVOST, commentary on c. 212, in *The Code...*, cit., p. 147.
50. Cf. P.-J. VILADRICH, "La declaración de derechos y deberes...," cit., p. 139; A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 147–149.
51. Cf. G. FELICIANI, *Il popolo...*, cit., p. 37.
52. Cf. H.J.F. REINHARDT, commentary on cc. 211–223..., cit., p. 212/3; K. MÖRSDORF, *Lehrbuch des Kirchenrechts*, I (Paderborn 1964), pp. 86–87; J. LISTL, "Die Rechtsnormen," in *Handbuch des katholischen Kirchenrechts* (Regensburg 1983), p. 91.

213 **Ius est christifidelibus ut ex spiritualibus Ecclesiae bonis, praesertim ex verbo Dei et sacramentis, adiumenta a sacris Pastoribus accipiant.**

Christ's faithful have the right to be assisted by their Pastors from the spiritual riches of the Church, especially by the word of God and the sacraments.

SOURCES: c. 682; *SC* 19; *LG* 37; *PO* 9

CROSS REFERENCES: cc. 96, 98, 144 § 2, 199, 1° et 3°, 204 § 1, 208–212, 214, 221 § 1, 223–224, 229 §§ 1 et 2, 240 § 1, 294, 387, 392 § 2, 528, 529 § 1, 530, 555 §§ 2, 2° et 3, 566 § 1, 619, 630 § 2, 756–757, 760–762, 766–767, 773, 776–778, 813, 843 § 1, 885 § 1, 898, 911–912, 914, 918, 921–922, 937, 980, 986, 1001, 1003 § 2, 1026, 1058, 1063, 1116, 1128, 1176 § 1, 1331 § 1, 1332, 1335, 1352 § 1, 1378, 1379

COMMENTARY

Daniel Cenalmor

1. A series of juridical consequences derive from the *conditio communionis* or the relationship of communion and solidarity of the people of God in regard to faith and the means of salvation,[1] since the position of the faithful with regard to those riches—among which the word of God and the sacraments can be singled out in particular—includes a true relationship of justice.

In fact, the means of salvation have been given by God to the entire Church.[2] And although we cannot speak of a right before God to receive them, we can indeed state that the faithful have the right to have those who dispense them, usually the sacred ministers, administer them justly. It is from this perspective that the *CIC* has incorporated among all the canons in this title the right of the faithful "to receive from their sacred Pastors assistance from the spiritual riches of the Church, especially the word of God and the sacraments." This is a right on which numerous specific prescriptions are based.

1. Cf. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), pp. 99 and 119.
2. Cf. ibid., pp. 119–120.

2. In various ways, it has been stressed that the right to the word of God and to the sacraments is one of the most radical and basic rights of the faithful.[3] "What's more, if there exists a relationship between the Hierarchy and the faithful—as has been said—it is precisely by virtue of the ministry that the hierarchy has received to teach, sanctify, and govern; therefore, the object of the primary and most basic right of the Hierarchy and the primary and most fundamental right of the faithful are the word of God and the sacraments."[4]

The Church is joined together and is built up by the word and the sacraments. For this reason, the right to them is a condition *sine qua non*, the absolutely necessary means to exercise the irrevocable and primordial right to belong to the Church and to participate in its unique mission,[5] of living in communion with it and of achieving the fullness of Christian life (cc. 209 § 1, 210).

3. Canon 213 is drawn from *Lumen gentium* 37, which, in turn, takes its inspiration from c. 682 of the *CIC*/1917, although with certain interesting variations.

The former c. 682 spoke simply of a right of lay people to spiritual riches "et potissimum adiumenta ad salutem necessaria," thereby suggesting that the fundamental purpose of that right was only what would be necessary for salvation, with the result that its force became slightly weakened in regard to other subjects. On the other hand, the Council, in addition to applying this right to all the faithful, openly taught that it extended not only to the minimum requirements needed for salvation, but also to the *abundant* reception of those spiritual riches that all Christians needed to follow their own vocation fully to sanctity.[6]

Canon 213 should be understood in this sense, despite the fact that its language has not adopted the adverb *abundanter*, which was present in the conciliar text.[7] This omission could be due either to the fact that it was believed that this word would be considered too generic and indeterminate from a juridical point of view, or instead, it was thought that if this right of the faithful was sanctioned in such broad terms, its effective implementation would become impossible in many territories lacking a suffi-

3. Cf. E. CORECCO, "Considerazioni sul problema dei diritti fondamentali del cristiano nella Chiesa e nella società. Aspetti metodologici della questioni," in *Les droits fondamentaux du chrétien dans l'Église et dans la société. Actes du IV Congrès International de Droit Canonique. Fribourg (Switzerland) 6–11.X.1980* (Milan 1981), p. 1230; J. RATZINGER, "Freiheit und Bindung in der Kirche," in ibid., p. 51; J.H. PROVOST, commentary on c. 213, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 148; J. MANZANARES, commentary on c. 213, in *Salamanca Com.*

4. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos* (Pamplona 1991), p. 85.

5. Ibid.

6. Cf. ibid., pp. 84–85; J.H. PROVOST, commentary on c. 213, in *The Code...*, cit, p. 148.

7. Cf. J. HERVADA, *Elementos de...*, cit., p. 120.

cient number of priests. But in any case, this omission that occurred in the *CIC* should not lead us to a minimalist interpretation of this prescription, similar to what was done in regard to c. 682 of the *CIC*/1917, but instead, in consonance with *Lumen gentium* 37, c. 213 should be interpreted within the full scope of its exigency, such that the right of the faithful to receive spiritual assistance should truly have the full breadth proposed by the Council.[8]

4. Within this prescription, the following should be singled out: the right in a strict sense, the juridically protected interest, and what this right presupposes insofar as it is an informing principle of ecclesiastical organization.[9]

The faithful have the strict right to receive spiritual assistance from those persons, institutions, or offices with which they are linked through a juridical bond; for example, from the parish priest or diocesan bishop, who can naturally can assure that assistance can reach them through other persons.[10] But although that right does not normally bring into existence obligations of justice between all the faithful and all the Pastors, on occasion, when it can only be satisfied by a specific sacred minister with whom the faithful is not juridically linked, there also arises a duty of justice with that minister.[11]

In this sense, the discipline currently in effect surpasses the prior discipline, since the *CIC*/1917 has tended to consider what arose from the *missio*—that is, ex officio—solely as a relation of justice, by reducing the remaining hypothetical cases to obligations of pure charity, although serious in given cases.[12] However the current *CIC* believes that, in given situations, there may also exist a true duty of justice with other sacred Pastors, through a general purpose originating in the sacrament of orders (cf., for example, cc. 843 § 1, 911 § 2 and 986 § 2).

Those practices unduly delaying the reception of sacraments constitute a violation of this right, as well as those that seek to make obligatory the ways of receiving the sacraments which the Church has not established as obligatory.[13]

5. The juridically protected interest under c. 213 is the interest of the faithful in regard to spiritual riches, without which they could not normally fulfill their duty to lead a holy life, according to their own condition and in accordance with their own spirituality. This is an interest that brings with it the qualification of the faithful to participate in those causes and procedures—whether judicial or administrative—in which their right

8. Cf. G. FELICIANI, *Il popolo di Dio* (Bologna 1991), pp. 39–40.
9. Cf. J. HERVADA, *Elementos de...*, cit., pp. 103 and 121.
10. J.H. PROVOST, commentary on c. 213, in *The Code...*, cit, p. 148.
11. Cf. J. HERVADA, *Elementos de...*, cit., pp. 103 and 121.
12. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 86–87.
13. Cf. J. HERVADA, commentary on c. 213, in *Pamplona Com.*

to receive those riches is involved, and which involves one's right to inform the Pastors of the Church of one's needs and wishes, through timely petition, and with the freedom and confidence inherent to the children of God and brothers in Christ—as *Lumen gentium* 37 indicates (c. 212 § 2).[14]

6. As an informing principle in ecclesiastical organization, c. 213 requires that administering the sacraments and preaching the word of God be organized in accordance with the needs of the faithful, in such a manner that they could enjoy these aids abundantly, to the extent possible, including even in harmony with their own vocation.[15] Canons 387, 528 § 2, 767 §§ 2–4, 771 § 1, 777, 986 § 1, for example, should be interpreted in this way.

The organization of the Hierarchy "should be created by heeding not only the precepts but also what has been commonly called supererogatory works. If, in order for Christians to live an authentic Christian life—for them to achieve the *fullness of Christian life* (*LG* 40)—they need continuous and intense participation in the sacraments, it is obvious that the Hierarchy has the duty to organize—to the limit of its possibilities—in such a manner that the faithful finds that it facilitates the possibility of turning to the sacraments."[16]

In regard to this, the *CIC*, in developing the principles and more specific provisions about this subject offered by Vatican II and by post-conciliar norms, contemplates a series of juridical institutions among its canons, for the purpose of performing particular pastoral activities that could serve to provide a more complete spiritual attention, adapted to the diverse needs of the faithful. Among these institutions, it is appropriate to indicate at the various levels of ecclesiastical organization: personal prelatures, hierarchical structures of a personal nature for the development of specific pastoral or missionary functions (cc. 294–297); episcopal vicars who collaborate with the bishops in the governance of part of the diocese, of certain matters, of a group of faithful of the same rite, or of a specific group of persons (cc. 476–481); and chaplains, priests to whom pastoral care is entrusted in a stable manner, at least in part, of some community or special group of the faithful (cc. 564–572). Flexibility in juridical governance is characteristic of all these institutions, in order that they can be adapted, through particular legislation, to the most diverse needs and circumstances.[17]

7. The right of the faithful to receive the assistance of the word of God and education in the faith is discussed in a general way, in addition to

14. Cf. J. HERVADA, *Elementos de...*, cit., p. 121.
15. Cf. ibid.
16. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 89–90.
17. Cf. J. SANCHIS, "Il diritto fondamentale dei fedeli ai sacramenti e la realizzazione di peculiari attività pastorali," in *Monitor Ecclesiasticus* 115 (1990), pp. 201–202.

c. 213, in c. 217, which speaks of the right of the faithful to a Christian education, and in c. 229 § 1, which takes up the right and duty of lay people to acquire knowledge of Christian doctrine. We, therefore, will not pause now to comment on this.

Insofar as the right to the sacraments is concerned, in addition to the prescriptions common to the seven sacraments related to this canon, there exists a specific discipline for each. This system of norms will always be needed, since it should not be forgotten that the juridical condition of the faithful in relation to the seven sacraments is different, and c. 213 would be of little use if it were not reflected in other, more specific provisions.

A first determination of c. 213, common to all the sacraments, is found in c. 387, which points out that the diocesan bishop "is to strive constantly so that Christ's faithful entrusted to his care may grow in grace through the celebration of the sacraments," thus corroborating in the fullest sense the way that this right is to be understood. The same conclusion may be reached when reading c. 528 § 3, in regard to the function of the parish priest, the text of which reads: "he is to strive to ensure that the faithful are nourished by the devout celebration of the sacraments, and in particular that they frequently approach the sacraments of the blessed Eucharist and penance."[18]

Canon 843 § 1, new in the *CIC*, states another common prescription that could stand in relation to c. 213. It sets forth the requirements that must be fulfilled so that the sacred ministers can fulfill the duty of administering the sacraments to the faithful: to ask for them opportunely, to be well disposed, and that the faithful are not prohibited by law from receiving them. These are the general limits on exercising the right which we have been discussing and which the *CIC* shall explain in greater detail when speaking about each sacrament.[19] Moreover, from the tenor of c. 843 it can be directly deduced—the opposite of what occurs with c. 213—that it is the duty of the sacred Pastors to administer the sacraments to the faithful and, indirectly, the corresponding right of the faithful to receive them.

8. From among the specific provisions in the canon for each sacrament grounded in this prescription, we only refer here to those which pertain to Eucharist, penitence, confirmation and anointing of the sick. Thus, it is obvious that the right to baptism is not inherent to the faithful, but pertains precisely to those who are not yet among the faithful, and the rights which are incumbent on marriage and sacred orders are not distinct from the respective rights to form a family and to assume the status of cleric, for which reason they belong less to the *conditio communionis* of

18. Cf. G. FELICIANI, *Il popolo...*, cit., p. 40.
19. Cf. ibid.

the faithful than to their *conditio libertatis*, and would fall more within the purview of c. 219 (see commentary on said canon).[20]

The faithful have the right to participate in the Eucharistic sacrifice, and to be admitted to holy communion, apart from the Mass as well as within, although a just cause would be required in order to receive it outside the Mass (cf. cc. 912 and 918). There even exists a generic duty to attend the Eucharistic sacrifice and to receive communion, as can be deduced from c. 898. But this duty is only established juridically, through the channels of ordinary law, in some cases, as are the Sunday precept (c. 1247) and the paschal precept (c. 920).[21]

The right to receive holy communion cannot be identified with the right to attend the Eucharistic sacrifice, among other reasons because, in order to receive communion, certain requirements must be fulfilled which are not asked of the person attending Holy Mass (cf. cc. 915, 916, 919; and also cc. 913 and 917).[22] Canon 912 explicitly states that all baptized persons can and should be admitted to holy communion, if they have not suffered some prohibition established by law. Therefore, they lack this right: those who do not have the capacity to understand the mystery of the Eucharist in their faith (c. 913); "those upon whom the penalty of excommunication or interdict has been imposed or declared, and others who obstinately persist in manifest grave sin, are not to be admitted to holy communion" (c. 915). This latter case is one involving those who find themselves in an irregular marriage, with the clarifications made by John Paul II in *Familiaris consortio* 81–82. The minister of the Eucharist has the duty not to admit these persons to communion.[23]

Nor should one who is aware of having fallen into grave sin receive the Body of the Lord (nor celebrate the Mass, if a priest) without previously having gone to sacramental confession, unless there is a grave reason otherwise and there is no opportunity to confess; in that case, the person is to remember the obligation to make an act of perfect contrition, which includes the resolve to go to confession as soon as possible (c. 916). This prescription distinguishes itself from the previous two, in that it does not entail the duty of the minister to deny communion; among other things, because the right to good reputation of the faithful must be safeguarded (c. 220). Insofar as fulfillment of the duty of contrition and of sacramental confession is concerned, it is appropriate to point out that this is required by the very nature of the Eucharist, participation in which is the sign of full communion with God and with the Church.[24]

20. Cf. J. HERVADA, *Elementos de...*, cit., p. 122.
21. Cf. ibid., p. 123.
22. Cf. ibid.
23. Cf. G.F. GHIRLANDA, "Doveri e diritti dei fedeli nella communione ecclesiale," in *La Civiltà Cattolica* 136 (1985), I, pp. 31–32.
24. Cf. ibid.

9. The right of the faithful to receive the sacrament of penitence, or, more strictly speaking, to be given the opportunity to approach individual confession, to have a confession heard, and to receive sacramental absolution if the confessor does not doubt his good disposition and if one asks to be absolved (cc. 980 and 986 § 1), can be explained, in the first place, if we consider that the Christian, while he is *holy,* is a *sinner,* and that insofar as he is a sinner, while he can damage the fullness of ecclesiastical communion, "he cannot break it in such a manner so as to cease to be a full member of the Church, also composed of sinners. And since the faithful are called to sanctification (c. 210), it does not seem that the Church can deny them the right to be in communion with it in all its fullness. Secondly, while the Church exercises mercy, it is the mercy of God which, insofar as it takes shape and is given individualized form in the faithful through the vocation to sanctification inherent to baptism, is justice before the Church."[25]

The conditions needed to be able to receive this sacrament are those to be inferred from cc. 959, 987 and 988: formal confession of sins, repentance, and the intention to make amends. Only if these conditions are fulfilled does the penitent have the right to absolution, while in their absence, the confessor would be obligated to deny it out of respect for God, for the Church, for the sacrament and for the person himself. In fact, penitence should be an end point in the transformation process of the sinner, and a point of departure for growth in Christian life and the performance of the obligation to lead a holy life (c. 210). But if these conditions are absent, the penitential act does not make sense, and it would leave the faithful in a state of ambiguity of conscience, before the Church, and before God, making subsequent progress along the road toward sanctification more difficult.[26]

The duty to hear confession falls on all those to whom, through their office, the care of the souls of the faithful has been entrusted, although, as c. 986 § 2 points out, in urgent necessity, "every confessor is bound to hear the confessions of the faithful, and in danger of death every priest is so obliged."

There also exists a generic duty to receive the sacrament of penitence, which is established through the channels of ordinary law in the precept of the yearly confession (cf. c. 989).[27]

10. The right of the faithful to confirmation and to anointing of the sick has naturally been given in the *CIC* by formalizing the applicable duties. The right to confirmation can be inferred from c. 885 § 1, in which it says that the diocesan bishop "is bound to ensure that the sacrament of

25. Cf. J. HERVADA, *Elementos de...*, cit., p. 124.
26. Cf. G.F. GHIRLANDA, "Doveri e diritti...," cit., pp. 32–33.
27. Cf. J. HERVADA, *Elementos de...*, cit., p. 123.

confirmation is conferred upon his subjects who duly and reasonably request it"; as well as from c. 890, in which parents and the pastors of souls are admonished to "strive to see that the faithful are well prepared to receive it and that they receive it at the opportune time."[28] And the right to anointing of the sick can be inferred in a similar manner from cc. 1003 § 2 and 1001, in which two different duties are established: that of the priests entrusted with the care of souls, "who have the obligation and the right to administer the anointing of the sick to those of the faithful entrusted to their pastoral care" (c. 1003 § 2); and that of the pastors of souls and the family members of the sick who "are to ensure that the sick are helped by this sacrament in good time" (c. 1001).

It does not seem to speak about a juridical duty to receive these sacraments, except in the case of the requirement to be confirmed in order to be promoted to holy orders (cf. c. 1050).

11. By way of observation, we should finally state that the *CIC* insists much more on duties in regard to administering the sacraments than on rights in relation to receiving them. This is logical, because the Church has always placed a greater insistence on duties than on rights; and because, while those rights do exist, "few of the faithful are inclined, for example, to demand communion—which may unlawfully be denied them apart from the Mass—given the humble attitude of personal unworthiness with which all the faithful should approach communion. Even to a lesser extent do there exist members of the faithful who show a willingness to confess as a result of a judgment of a judicial sentence or an administrative recourse. The attitude of demanding, in this case, is odious to those same people who hold that right."[29] For this reason, the *CIC*, when considered in its entirety, has placed greater stress on the duties of those who administer the sacraments.

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28. Cf. P. MONETA, "Il diritto ai sacramenti dell'iniziazione cristiana," in *Monitor Ecclesiasticus* 115 (1990), p. 624.
29. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 89.

214 **Ius est christifidelibus, ut cultum Deo persolvant iuxta praescripta proprii *ritus* a *legitimis* Ecclesiae Pastoribus approbati, utque propriam vitae spiritualis formam sequantur, doctrinae quidem Ecclesiae consentaneam.**

Christ's faithful have the right to worship God according to the provisions of their own rite approved by the lawful Pastors of the Church; they also have the right to follow their own form of spiritual life, provided it is in accord with Church teaching.

SOURCES: *SC* 4; *OE* 2, 3, 5

CROSS REFERENCES: cc. 96, 98, 111–112, 199, 1° et 3°, 204 § 1, 208–213, 215–217, 219, 221 § 1, 223–224, 239 § 2, 240 § 1, 246 § 4, 294, 372 § 2, 383 § 2, 476, 479 § 2, 518, 630 §§ 1 et 3, 719 § 4, 846 § 2, 923, 991, 1015 § 2, 1021, 1038, 1109

COMMENTARY

Daniel Cenalmor

The right to one's own rite and the right to one's own spirituality can be found to be connected to each other for several reasons, since both are grounded in the principle of individuality,[1] both can be exercised individually as well as collectively, and their material object are those matters in which there exist at times "a certain relationship, since rites tend to surpass simple liturgical differentiation, in order to constitute the expression of forms of spirituality experienced within the ordinary structures of the Church."[2] In addition, it can be said that the existence of different rites is due, in the last analysis, to the spiritual, theological, and liturgical patrimony of a specific group of the faithful, on the basis of which certain liturgical and disciplinary norms have been born, unique to them including their own Hierarchy.[3]

Therefore, it should not strike us as strange that the right to one's own rite and the right to one's own spirituality have appeared conjoined within the same canon from the first *schemata* in the *LEF* project. In any

1. Cf. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), pp. 125 and 129.
2. Ibid., p. 125.
3. Cf. P.-J. VILADRICH, "La declaración de derechos y deberes de los fieles," in REDACCIÓN IUS CANONICUM, *El proyecto de Ley Fundamental de la Iglesia* (Pamplona 1971), p. 143.

case, even though they are not separated into two paragraphs, as perhaps might have been preferred, it is necessary to stress at the same time that we should distinguish between one right and the other, given that they refer to different matters, between which there exists a certain autonomy. It is sufficient to point out in this regard that membership in the same rite is perfectly compatible with expressing diverse forms of spirituality; and, conversely, expressing the same form of spiritual life is compatible with membership in diverse rites and disciplines.[4]

1. *The right to one's own rite*

a) Any ritual Church *sui iuris* is fundamentally understood in this prescription to be a *rite*; in other words it is any particular Church within the unity of the catholic Church, endowed with its own Hierarchy and discipline, its own liturgical rites and its own spiritual patrimony (cf. *OE* 2, 3 and 5). This is the primary sense in which the term *rite* is used within the context of the *CIC*, and is the meaning intended in the majority of conciliar sources cited in regard to this canon. That meaning stands out more clearly in the parallel norm—c. 17—of the *CCEO* which also originated in the draft of the *LEF.*

The great majority of Catholics today belong to the Latin rite Church. But, in addition, there are also some twenty-one ritual *sui iuris* Churches of the Eastern tradition in full communion with the Apostolic See (six patriarchal Churches, two greater archiepiscopal Churches, four metropolitan *sui iuris* Churches, and nine other *sui iuris* Churches), all of which have their own proper discipline, whose common aspects have been collected since 1990 in the aforementioned *CCEO.*[5] And nothing can prevent others from coming into existence some day, as the fruit of this right, whether based on some community of the faithful, or based on some other Christian community using this means to unite itself with the catholic Church. This is the case with nearly all the ritual *sui iuris* Churches existing today, which have originated either from particular churches that never lost their communion with Rome, or instead developed from Churches that separated in due course but then later returned to the Catholic unity.

As Vatican II has taught, no Church is greater than others in dignity, rights or obligations by virtue of its rite, nor in regard to the preaching o

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4. Cf. ibid., p. 145; E. MOLANO, "El derecho de los laicos a seguir la propia forma de vida espiritual," in *Ius Canonicum* 24 (1986), p. 517.

5. Cf. I. ŽUŽEK, "Incidenza del 'Codex Canonum Ecclesiarum Orientalium' nella storia moderna della Chiesa universale," in *Ius in vita et in missione Ecclesiae* (Vatican City 1994), pp. 675–735.

the Gospels throughout the world, under the direction of the Roman Pontiff (*OE* 4).

b) When rite is viewed in this way, it not only comes to constitute a defining element of a given particular Church, but also contributes to define the ecclesial identity of the faithful[6] who have the right to keep communion with the Church through their own ritual Church.[7]

From the moment itself of baptism, the faithful are ascribed to a rite, which according to the norm is that of their parents, even though a candidate for baptism who has completed the fourteenth year of age may freely choose to be baptized in another ritual Church *sui iuris*, to which the candidate will henceforth belong (c. 111). That ritual membership can no longer be broken afterwards, except in exceptional cases (c. 112). This involves: the right of the faithful to worship God in accordance with the norms of their own rite (c. 214); the obligation to preserve one's own rite in all places, by practicing it and observing it to the extent possible as long as none of the conditions in c. 112 is lost (cf. *OE* 4); and other more specific norms, such as those in cc. 846 § 2, 923, 991, 1015 § 2, 1021 and 1109, derived from the preceding right and obligations.

c) But the term *rite* in c. 214 seems to acquire, in addition, a second meaning. That *rite* could be any liturgical family, that is, any of the liturgical rites referred to by *Sacrosanctum Concilium* 3 and 4, even though they may lack their own Hierarchy or discipline. It is appropriate to include among these, therefore, apart from the five great Eastern traditions (Alexandrine or Coptic, Constantinopolitan or Byzantine, Armenian, Eastern Syrian or Chaldean and western Syrian or Antiochian), and from the variants deriving from them (c. 28 § 2 *CCEO*), the distinct liturgical traditions of the West (Roman, Ambrosian, Gallican, and Hispanic-Visigothic) and the variants existing within the Roman liturgy (in particular, in the Churches of Braga and Lyon, and in some religious orders).[8]

In effect, when citing *Sacrosanctum Concilium* no. 4 among its sources, it can be said that c. 214 also recognizes, at least at a secondary level, the right to practice those rites, to the extent that they can be considered as *belonging* to the faithful; and similarly, it accepts the creation of new rites of this type—as we will attempt to explain below—provided that they are approved "by legitimate Pastors of the Church."

d) The clause "a legitimis Ecclesiae Pastoribus adprobati" in reality only acquires its full sense in this latter case, since in the ritual *sui iuris* Churches, that approval is encompassed within a wider requirement: its communion with the Apostolic See, which should be assumed in principle. In fact, c. 17 of the *CCEO* has omitted these words when adopting the

6. Cf. G. FELICIANI, *Il popolo di Dio* (Bologna 1991), p. 41.
7. Cf. J. HERVADA, *Elementos de...*, cit., p. 125.
8. Cf. J. MANZANARES, commentary on c. 214, in *Salamanca Com*; CCC, 1203.

right of the faithful "ut cultum divinum persolvant secundum praescripta propriae *Ecclesiae sui iuris,*" even though it has stated in another passage that the ritual Church *sui iuris* is "a group of Christian faithful united by a Hierarchy according to the norm of law which the supreme authority of the Church expressly or tacitly recognizes as *sui iuris*" (c. 27 *CCEO*).

But some authors have criticized the expression "a legitimis Ecclesiae Pastoribus adprobati" in all cases, that is, even when it is only believed to refer to liturgical rites without its own Hierarchy or discipline. And this is so either because it is believed to imply that the right to one's rite originates at the time of its approval by the Hierarchy, and that it derives from the hierarchical bond to a particular Church and not to baptism;[9] or because the said clause seems to exclude *a priori* the possibility of the creation of new rites, which, before they can be officially approved, must necessarily undergo a suitable period of experimentation.[10]

This notwithstanding, we do not believe that the tone of the canon on which we have been commenting is entirely misguided. The right to one's own rite is not a product of that rite, nor does it originate in its approval by the Hierarchy, nor does it derive from the hierarchical bond with the faithful to their particular Church, but it is actually based on baptism.[11] However the Hierarchy should ensure that the various rites, which have a close relationship with faith—"lex orandi, lex credendi"—are truly in harmony with it. There can be no doubt that the exercise of this right would cease to be legitimate if it comes to damage ecclesial communion (see commentary on c. 209: no. 1).

e) Approbation of a rite by legitimate Pastors may be understood as a requirement for the correct and full exercise of that right; it would lose its legitimate nature, on behalf of communion, if, on the contrary, their disapproval were clearly evident. But there is no reason why that disapproval always has to be explicit, since the *CIC* does not say anything in this regard. In fact, when applying the traditional rule of interpretation, *favorabilia amplianda, odiosa restringenda,* to this case and the current c. 18, it can be stated that it would be necessary to mention a condition of this type if, in fact, an attempt was made to impose it.

A natural thing would be that the approbation of a rite many times is simply tacit, and even more to the point, as long as it is established and does not overly depend on information that is juridically capable of being recorded, to be used to request approval in a more formal way. On the other hand, the fact alluded to above regarding recognition of the Eastern ritual Churches *sui iuris* granted through the supreme authority of the

9. Cf. P.-J. VILADRICH, "La declaración de derechos...," cit., p. 144.
10. Cf. ibid.; G. FELICIANI, *Il popolo...*, cit, p. 42.
11. Cf. P.-J. VILADRICH, "La declaración de derechos...," cit., p. 144.

Church explicitly, as well as tacitly, seems indirectly to support this explanation.

The tone of c. 214 should not, therefore, impede the emergence of new rites, nor of the various adaptations of a particular rite by specific communities. This possibility was already provided for by the Council in regard to the Roman rite, when it established that, when revising the liturgical books, except for the substantial unity of the Roman rite, "legitimate variations and adaptations by diverse groups, regions, peoples, in particular, in the missions" would be accepted (*CS* 38), and can, in fact, already be included among the consequences of this right, notwithstanding the fact that the text of the canon is not completely explicit in this regard.[12]

f) The right to one's own rite is a subjective right that—as we indicated at the beginning of this commentary—can be exercised on an individual, as well as a collective, level; and it can be applied analogously to particular churches and to other moral persons.[13]

In addition to demanding immunity from coercion, this right demands that, to the extent possible, the faithful can celebrate acts of worship in the form and manner intrinsic to the ecclesial cultures and traditions in which they have been formed, which are those that as a rule afford them greater spiritual usefulness.[14] For this reason, this right also requires, as an informing principle, the creation of structures of different rites where there may be a sufficient number of persons belonging to that rite and where it advances the good of the faithful (*OE* 4). This obligation has been formalized in the *CIC* through c. 383 § 2, in which the duty to provide for their spiritual needs has been imposed on the bishops who have members of the faithful of the Eastern rite in their dioceses, "by means of priests or parishes of the same rite, or by an episcopal Vicar." Analogous provisions can be found as well in c. 193 of the *CCEO*, which stresses the "serious obligation" of the bishop to strive to ensure that the faithful entrusted to his care, if they are members of a different rite, continue to honor it and, to the extent possible, observe it.[15]

The obligation to follow one's own right, in any case, should not be assumed to be an obstacle to receiving the assistance of spiritual riches to which the faithful are entitled (c. 213). From this perspective, the *CIC* has explicitly indicated that the faithful shall always be free to participate in the Eucharistic sacrifice and to receive sacred communion in any Catholic rite (c. 923), and to confess with the lawfully approved confessor of their

12. Cf. G. FELICIANI, *Il popolo...*, cit, p. 42.
13. Cf. E. CORECCO, "Il catalogo dei doveri-diritti del fedele nel CIC," in *I diritti fondamentali della persona umana e la libertà religiosa. Atti del V Colloquio Giuridico (8–10.III.1984)* (Rome 1985), p. 115.
14. Cf. P.A. BONNET, "De omnium christifidelium obligationibus et iuribus," in P.A. BONNET-G. GHIRLANDA, *De christifidelibus* (Rome 1983), p. 39.
15. Cf. J. HERVADA, *Elementos de...*, cit., p. 125; G. FELICIANI, *Il popolo...*, cit, pp. 42–43.

choice, even though the faithful may be a member of another rite (c. 991). And what gives justification to the right to one's own rite and to the obligation to observe it, its ultimate reason for being, is the greater spiritual good of the faithful, which is likewise the end sought by the right to be discussed below.

2. *The right to one's own spirituality*

a) The right to a spirituality of one's own becomes obvious, given the duty all the faithful to lead a holy life, according to their condition (c. 210). Its deepest roots lie in the universal vocation to sanctity, to which all the faithful are called through baptism; and it is based very closely in the principle of personal choice, which, insofar as sanctity is concerned, translates into a pluralism of forms in which the latter can be attained through the founding will of Christ, made explicit over the course of centuries, and in the variety of graces through which the Holy Spirit acts to lead souls along diverse paths.[16]

In fact, given that all the faithful have been called to the same sanctity, "all who act under God's spirit," "according to their own gifts and duties," and attaining this sanctity "in the conditions, duties and circumstances of their life and through all these" (*LG* 41)—which ultimately assumes a diversity of forms of spiritual life—"it is evident that all the faithful have a right, whatever and however much this means, to follow that call to sanctity within their own spirituality, according to the variety of gifts or charismas that the Spirit distributes among the members of the people of God."[17] As a result, there exists, in the Church, a multiplicity of forms of spirituality—of spiritual life—and the freedom to adopt any of these properly belongs to the faithful because of divine law.[18]

b) The right to a spirituality of one's own can be considered an application of the right to freedom in religious matters within the same Church. In fact, the next two sources on which the writers of the draft of the *LEF* based this prescription were *Gaudiam et spes* 2 and *Dignitatis Humanae* 2,[19] both of which speak of respect for human dignity and freedom in religious matters.[20]

16. Cf. ibid., p. 129; F.X. DE AYALA, "O direito a uma espiritualidade própria," in *Liber Amicorum Monseigneur Onclin* (Gembloux 1976), p. 101.
17. A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos* (Pamplona 1991), p. 115.
18. Cf. J. HERVADA, *Elementos de...*, cit., p. 129; E. MOLANO, "El derecho de los laicos...," cit., p. 520.
19. Cf. D. CENALMOR, *La Ley Fundamental de la Iglesia. Historia y análisis de un proyecto legislativo* (Pamplona 1991), p. 426.
20. Cf. F.X. DE AYALA, "O direito a uma espiritualidade...," cit., p. 102.
Cf. G. FELICIANI, *Il popolo...*, cit, p. 43.

The second of those sources explains that the right to religious freedom "means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits" (*DH* 2). This text seems significant to us, since the description it offers can derivatively be applied to the right to a spirituality of one's own, to which it lends valuable support, as we shall see later on.

c) Although the task of expressing what should be understood by the *form of spiritual life*, in all its depth, more properly belongs to theologians, it is also of interest to canonists to learn about its undefined characteristic content in order to contribute, in this way, to the effective attainment of spirituality by each of the faithful, within the ecclesial framework.

Spiritual life, in following certain Vatican II texts, can be defined—according to Feliciani—as that relationship of the faithful "hidden with Christ in God," that is nourished by prayer, by the Word, and by participating in the liturgy, and which is the source and impulse of love towards others and towards the building up of the Church (cf. *PC* 6; *AA* 4). This involves, therefore, the absolutely personal and intimate sphere in the life of the faithful, in which the freedom of the children of God is to be explained in all its fullness.[21]

But if spiritual life is reduced to its purely internal aspects, neither would it be understood for what it actually is, nor would it naturally acquire the meaning that the *CIC* has intended for this canon. Spiritual life is that sphere which involves the totality of the human being, in its individuality and the unique social dimension that belongs to him or her. There is something that, in addition to involving a person's interior relationship with God, carries with it an external manner of behaving, a unique way of cultivating virtues and of making use of the means of sanctification of the Church, an ecclesial exercise of personal charismas and a particular apostolic way of acting within the framework of the Church and of human society,[22] all of which is protected by this right to follow "their own form of spiritual life, provided it is in accord with Church teaching."

d) Just as with the right to freedom, the right to a spirituality of one's own demands, above all, immunity from coercion, such that, within any framework of ecclesial society, acts of improper interference are to be considered unlawful and anti-juridical when choosing or exercising a specific form of spirituality. No Christian should attempt to impose upon others a specific form of spiritual life, much less to raise obstacles or exercise moral pressure that hinders, makes difficult, or fails to respect the spiritu-

21. CF. G. FELICIANI, *IL POPOLO...*, CIT, P. 43.
22. Cf. F.X. DE AYALA, "O direito a uma espiritualidade...," cit., pp. 104–105.

ality of another in any way. Taking into account the importance of relationships of authority and obedience, this respect ought to be even greater on the part of sacred ministers, who would commit a clear act of abuse of power if they attempted to influence the legitimate spirituality freely chosen by another by imposing their authority, since this subject, when considered directly, falls beyond the scope of human authority by its own nature (cf. *DH* 2 a), except insofar as it pertains to the judgment that it is in agreement with Church doctrine, which falls under the responsibility of the Hierarchy.[23]

But, in addition to demanding immunity from coercion, the right which is now the subject of our discussion also finds concrete expression in the practical need of the Christian faithful to avail themselves of the means of sanctification that exceed the personal sphere, in a manner as tailored as possible to their spiritual requirements, but naturally not with the intention that they can ask the impossible of the sacred ministers, who may not always be able to grant those petitions that are asked of them, and, above all, who must observe the pastoral priorities established by the Church.[24] The applications of this principle are many. In the first place, the sacred Pastors should not take advantage of their ministerial powers to determine the forms or means of spirituality, whether directly or indirectly, through acts or omissions. The ease of access to the sacraments and governance over other acts of worship should be provided for by first heeding circumstances (schedules, trips, etc.) and the spiritual well-being of the faithful, more than by virtue of the personal interests of the ministers. Preaching the divine word should be done in observance of real situations and the spiritual needs of those receiving it.[25] In this sense, there is clearly an organic connection between the right to receive the assistance of spiritual riches from the Pastors (c. 213) and the right to a spirituality of one's own, especially insofar as lay people are concerned.[26]

e) Freedom of association and of meeting (c. 215) is another prescription linked with this right, since it is evident that Christians many times will follow the path of their own sanctity better by joining with others for the purpose of rendering mutual assistance. In all other respects, even though the legislator many not have explicitly mentioned that members of the faithful can exercise the right to a spirituality of their own, at an individual, as well as a collective, level, it is obvious, from any perspective, that both forms in which this right is exercised are appropriate (cf. *DH* 2 a)—without the juridical status under which the group is created becoming the determining factor—provided that the requirements estab-

23. Cf. ibid., pp. 108–109.
24. Cf. J.H. PROVOST, commentary on c. 214, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 149.
25. Cf. F.X. DE AYALA, "O direito a uma espiritualidade...," cit., p. 110; A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 115–116.
26. Cf. E. MOLANO, "El derecho de los laicos...," cit., p. 521.

lished by law are fulfilled, as the history of the Church shows, in which adoption of a specific mode of spiritual life on the part of the faithful has frequently coincided with membership in a given association, ecclesial movement, institute of sacred life, or any other group characterized by a spirituality inherently its own.[27]

The right to one's own form of spiritual life is also related to the right to the personal apostolate, since all solidly grounded spirituality involves in and of itself an apostolic way of acting inherent to it (cf. *AA* 4 and 16). In reality, it cannot be said that there exists a free exercise of the right to a spirituality of one's own if the rights and duties pertaining to the personal apostolate are not respected in their diverse forms (cc. 211, 215, 216, 225, etc.). This right would be injured, without a doubt, if under any hypothetical authority the faithful are required to participate in apostolic activities that would distort their own spirituality in any way.[28]

Based on the right to a spirituality of one's own, when considered in the breadth we have been discussing, the exercise of legitimate and true charisms of the faithful can be deduced, since charisms are graces of the Holy Spirit which give shape to the spiritual life of Christians and their resulting apostolate, and their exercise serves to promote the spiritual growth of the faithful and of the Church. However, some authors have overlooked an explicit mention of them[29] in the *CIC*, and even the recognition of what could be called "the right to the comprehensive exercise of personal charisms," distinguishable from the right to a spirituality of one's own.[30]

Finally, the right we have been discussing could likewise be connected to the right to the free choice of one's state (c. 219), to the right to freedom in temporal affairs (c. 227), and to the right and duty to receive a suitable Christian formation (c. 217), which includes the right to an in-depth knowledge of the sacred sciences taught at ecclesiastical universities (c. 229). These last two rights, in fact, are also needed for the development of one's own form of spiritual life and of an apostolic style of one's own.[31]

f) The diverse norms of the *CIC* pertaining to the freedom which the faithful enjoy, in order to gain access to the means of sanctification offered to them by the Church, can be considered to be inspired by this right. In this sense, cf., for examples cc. 912, 918 and 923, in regard to the

27. Cf. F.X. DE AYALA, "O direito a uma espiritualidade...," cit., p. 112; E. MOLANO, "El derecho de los laicos...," cit., p. 522; J. H. PROVOST, commentary on c. 214, in *The Code...*, cit., p. 149; G. FELICIANI, *Il popolo...*, cit, p. 44.
28. Cf. F.X. DE AYALA, "O direito a uma espiritualidade...," cit., pp. 111–112.
29. Cf. G. FELICIANI, *Il popolo...*, cit, p. 44.
30. Cf. P.-J. VILADRICH, "La declaración de derechos...," cit., p. 145.
31. Cf. E. MOLANO, "El derecho de los laicos...," cit., pp. 518 and 521.

Eucharist, and cc. 239 § 2, 240 § 1, 246 § 4, 630, 991, etc., in regard to the sacrament of penance and spiritual guidance in general.[32]

Some of these latter norms cited, moreover, indirectly highlight how, even though we may certainly speak about a priestly, religious and lay spirituality, many more specific forms of spirituality than canon law can envision, in turn, fall within the scope of each of these three generic types of spiritual life. Thus, spiritual life should not be pigeonholed into rigid categories. Neither should an attempt be made, within a given scope, to monopolize a specific spirituality, under the pretext of perhaps experiencing communion with the Church better, since freedom and initiative in spiritual life, and, in general, the wide respect for the action of the Holy Spirit on souls, harmonize perfectly with the unity of the Church, while, at the same time, they constitute a wonderful manifestation of the sense of being Catholic (cf. *UR* 4).

g) The right to a spiritual life of one's own is dependent upon the fact that the latter "is in accord with Church doctrine," as c. 214 expressly indicates. This reference, at first glance, may seem to be superfluous, since it clearly emanates from the general obligation to preserve communion with the Church at all times (c. 209 § 1); but, in reality, it is aimed at excluding, in an implicit way, the existence of any other limitation.[33]

The ensuing judgment of evangelic agreement about the forms of spirituality that the faithful wish to live, whether on an individual basis or collectively, fall under the responsibility of the Hierarchy, with the obligation that this judgment assume the form of a juridically protected interest of the faithful, which would be encompassed within the right of petition (c. 212 § 2), and that it entails, at the very least, the right to be heard.[34]

In any case, "it would always be appropriate to perceive a certain *favor libertatis* in regard to all judgments of the ecclesiastical authority which must apply norms restricting the free exercise of rights or which prescribe penal sanctions, since such norms should be interpreted strictly (c. 18)."[35]

h) The right to a spirituality of one's own serves as an informing principle in pastoral action, which should be performed so as to respect, protect and encourage the particular form of spiritual life of each member of the faithful.[36] This presupposes, in terms of the ecclesiastical organization, not only the need to respect the system of norms in the Code intended to safeguard this right, but also to put into play all the possible

32. Cf. ibid., p. 527.
33. Cf. G. FELICIANI, *Il popolo...*, cit, p. 43.
34. Cf. J. HERVADA, *Elementos de...*, cit., p. 129.
35. E. MOLANO, "El derecho de los laicos...," cit., p. 523.
36. Cf. J. HERVADA, *Elementos de...*, cit., p. 129.

forms of common and specialized pastoral action suggested by the Council and later recognized in the CIC.

To cite just a few examples, think of the new norms that facilitate the care given to specific groups of faithful through churches with rectors or chaplains, or in the canons which provide for the creation of personal prelatures or other jurisdictional structures, in order to carry out specific pastoral works. To take advantage of these new pastoral resources, by allowing the spiritual needs of the faithful to be better served, would redound to the greater benefit of the latter, as well as of the particular churches and of the universal Church.[37]

37. Cf. E. MOLANO, "El derecho de los laicos...," cit., pp. 527–530.

215 **Integrum est christifidelibus, ut libere condant atque moderentur consociationes ad fines caritatis vel pietatis, aut ad vocationem christianam in mundo fovendam, utque conventus habeant ad eosdem fines in communi persequendos.**

Christ's faithful may freely establish and direct associations which serve charitable or pious purposes or which foster the Christian vocation in the world, and they may hold meetings to pursue these purposes by common effort.

SOURCES: c. 685; PIUS PP. XI, Enc. *Quadragesimo Anno*, 15 maii 1931 (*AAS* 23 [1931] 177-178); IOANNES PP. XXIII, Enc. *Pacem in terris*, 11 apr. 1963 (*AAS* 55 [1963] 263); *AA* 18–21; *PO* 8; *GS* 68

CROSS REFERENCES: cc. 95, 96, 98, 114–123, 199, 1° et 3°, 204 § 1, 208–214, 216, 219, 221 § 1, 222–224, 227, 278, 298–329, 394, 529 § 2, 573 § 2, 577–598, 602, 604 § 2, 606–607, 708–710, 725, 731–746, 1374

COMMENTARY

Daniel Cenalmor

A meeting (*conventus*) is any gathering of two or more persons in the same place for a given reason, but does not result in a juridical bond being generated among those in attendance. An association (*consociatio*) is a stable union of at least three (c. 115 § 2) in order to pursue specific ends conducive to the common good of its members or of other persons, which could not be attained as effectively by individuals acting on their own.

The right to association and the right to hold meetings are human rights of freedom recognized today by a large number of governments. However, by including them in the list of obligations and rights of the faithful, the legislator has sanctioned them, not merely in a generic sense,

but rather, with express and specific reference to the purposes of an ecclesial nature, from which perspective they are true rights of the baptized.[1]

1. *The right of association*

a) The existence of a natural right of association which is founded on the social nature inherent to human beings, and which does not derive from a concession granted by a civil authority, is a truth constantly defended by the Magisterium of the Church[2] and by canonical doctrine.[3] However, in terms of the ecclesiastical community, recognition of the right of association of the baptized has been the fruit of a relatively recent and gradual development, in which Vatican Council II has played a decisive role, and which has culminated in the complete formalization of this right of the faithful, beginning with the promulgation of the current *CIC*.

The relative lateness of this process can be explained. Even though the phenomenon of association may have played a significant role in the history of the ecclesiastical community since time immemorial,[4] and some authors have declared themselves in favor of the right of association of the faithful well before the Council,[5] in reality, "neither could this right be understood in its fullest sense in terms of the conception of the Church prevailing in the first half of this century, nor could it be denied or failed to be recognized since the Council, once the idea of the Church as the people of God had been accepted."[6]

b) The principle of sociality in the Church, essential in order to understand the right of association, is placed by theologians and canonists (particularly since the fifteenth century) within a framework of the rela-

1. Cf. G. Feliciani, *Il popolo di Dio* (Bologna 1991), p. 32.

2. Cf. *RN* 40–47; *QA* 9–11; Pius XII, Enc. *Sertum laetitiae*, November 1, 1939, in *AAS* 31 (1939), pp. 635–644; John XXIII, Enc. *Pacem in terris*, April 11, 1963, in *AAS* 55 (1963), p. 262.

3. Cf. A. Díaz y Díaz, *Derecho fundamental de asociación en la Iglesia* (Pamplona 1972), pp. 11–15; L. Martínez Sistach, "El derecho fundamental de la persona humana y del fiel a asociarse," in *Asociaciones canónicas de fieles* (Salamanca 1987), pp. 67ff.

4. Cf. W. Onclin, "Principia generalia de fidelium associationibus," in *Apollinaris* 36 (1963), pp. 68–76; J.R. Amos, "A legal history of associations of the christian faithful," in *Studia Canonica* 21 (1987), pp. 273–280; A. García y García, "Significación del elemento asociativo en la historia del Derecho de la Iglesia," in *Das konsoziative Element in der Kirche. Akten des VI. internationalen Kongresses für kanonisches Recht (München, 14–September 19,1989)* (St. Ottilien 1989), pp. 25–47, L. Martínez Sistach, *Las asociaciones de fieles* (Barcelona 1994), pp. 14–15.

5. Cf. C. Lombardi, *Iuris canonici privati institutiones* (Rome 1901), pp. 483ff; L. de Luca, "I diritti fondamentali dell'uomo nell'ordinamento canonico," in *Acta Congressus internationalis iuris canonici (Roma, 25–September 30,1950)* (Rome 1953), p. 100.

6. A. del Portillo, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos* (Pamplona 1991), pp. 121–122.

tionship between the Hierarchy and the faithful. "It is said, the Church is a society because the Hierarchy has the power of jurisdiction and of orders in regard to other members of faithful, while the latter are considered mere passive subjects of both powers."[7] Given that the sociality of the ecclesiastical community has been conceptualized in this way, it should not strike us as strange that associations of the faithful, and in particular, of lay people, should be seen as a phenomenon of organization of ecclesial structures that received their existence from the Hierarchy, the governance of which fell solely under the latter's responsibility. This mentality was also the result of the belief that the mission of the Church identified itself with the mission of the Hierarchy. From that perspective, active participation of lay people in the life of the Church would be understood as assistance rendered to the clergy and as an extension of the latter's mission, and there would also exist strong dependence in fact and in law, including in internal governance, of the majority of associations in regard to ecclesiastical authority.[8]

Such a conceptualization explains why the right of association of the faithful did not attain the level of explicit recognition in the *CIC*/1917, even though an implicit recognition was indeed mentioned;[9] and why the constitutive act of an association in the norms of the *CIC*/1917 was not the result of an agreement between individuals, but rather required the intervention of the Hierarchy, for purposes of establishing or approving the association before the latter could come to exist *in Ecclesia*.[10]

c) The first explicit affirmation made by the authority of the Church regarding the native right of the faithful to establish associations for a supernatural purpose can be found in the Decree *Corrienten*, given by the SCCouncil on November 13, 1920.[11] It was Vatican II which, when offering the suitable ecclesiological premises for the correct understanding of the right of association, so as to assert it with sufficient clarity, made it possible that the *CIC* could give it full recognition, consistent with its authentic nature.

In fact, the notion of the people of God developed in conciliar documents "imply that the principle of sociality in the Church resides in the union of all the faithful, with a view towards the sole and common purpose of the Church, for which all are responsible, according to the unique mission of each one."[12] The mission of the people of God is not exclusively that of the Hierarchy. The Hierarchy can and should oversee, encourage

7. Ibid., p. 122.
8. Cf. ibid.
9. Cf. *Schema decreti de apostolatu laicorum (April 27, 1964)* (Typis polyglottis Vaticanis 1964), p. 46.
10. Cf. *CIC*/1917, c. 686 § 1; L. NAVARRO, *Diritto di associazione e associazioni di fedeli* (Milan 1991), pp. 10–11.
11. Cf. *AAS* 13 (1921), p. 139.
12. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 123.

and direct all who are baptized, but it should not deny them this mission, nor should it make it difficult for them to fulfill effectively the mission belonging to each of them. And, since the fulfillment of that mission is not possible in an exclusively individual way—given that there are many activities which, while not inherent to the Hierarchy, are encompassed within the spheres of competence of any member of the Church, and require the involvement of others—it can be inferred that the right of association is a true *ius nativum* of the faithful, a right responding to their demands, both human and Christian.[13]

Vatican Council II itself even explicitly recognized that the laity have the right to establish and to govern associations and to join them, provided that due submission to ecclesiastical authority is always observed (*AA* 19 d). In reference to secular priests, it pointed out that "associations of priests are also to be highly esteemed and diligently promoted, when, by means of rules recognized by the competent authority, they foster priestly holiness in the exercise of the ministry through a suitable and properly approved rule of life and through fraternal help, and so aim at serving the whole order of priests" (*PO* 8).

Although it cannot necessarily be inferred from the text we have just cited that the right of association also belongs to priests, the will of the Council was to recognize such a right for them also, as can be deduced from the response to *modus* 129 presented to chapter II of the Decree *Presbyterorum Ordinis*, approved by the general Congregation on December 2, 1965: "Priests cannot be denied what the Council, taking the dignity of human nature into consideration, declared as belonging to the laity, since it is a response to natural right."[14] In this way, it is understandable that the *CIC*, in c. 215, has finally been able to attribute this right formally to all the faithful without undue difficulties.

d) There would have been notable differences between the first *schemata* of c. 215 and its final text due, above all, to the progressive elimination of various clauses by means of which attempts were initially made to qualify this norm.[15] For this reason, the text of the code currently in effect presents a more restrained formulation, more in keeping with the nature of the right of association of the faithful, in which only the characteristic principles and content of that right are adopted.

Despite the fact that the tone of c. 215 does not state with clarity that the freedom of association in the Church is a true right, since it uses *integrum est* and not *ius est*, the later being a more precise formula, the expression used should be understood in light of the magisterium of the

13. Cf. ibid., pp. 123–124.
14. Cf. *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II*, Typis polyglottis Vaticanis 1970–1980, IV/VII, p. 168.
15. Cf. R. RODRÍGUEZ-OCAÑA, *Las asociaciones de clérigos en la Iglesia* (Pamplona 1989), pp. 170–186.

Council and of the development of the canon, where it is evident that we find ourselves, without a doubt, in the face of an authentic right.[16] In fact, Vatican II was always understood in this way. The same thing is true in regard to the redactors of this prescription, who, when explaining c. 17 of the *Textus prior* of the *LEF*—one of the first precedents of the current c. 215, where the words *integrum est* were also used, and where *Apostolicam actuositatem* 19 and *Presbyterorum Ordinis* 8 were cited as sources—expressly insisted that, by means of this, the *ius associationis* was recognized for all the faithful.[17]

Canon 215, therefore, proclaimed an authentic right, a right which, in an analogous manner to what occurred with the human right of association,[18] as can be inferred from *Apostolicam actuositatem* 18,[19] does not derive from a concession granted by ecclesiastical authority, but rather is immediately grounded in the social nature of people and of the community of the children of God, and, most distantly, in the insufficiency of individual efforts to attain the ends inherent to the baptized. For this reason, it can be considered a *innate*[20] or *fundamental*[21] right of all the members of the people of God, inherent to—as Hervada suggests—the *communio fidelium*.[22]

e) The right of association of the baptized can be distinguished from the human right of association by the specifically ecclesial character of the ends already discussed. Such character is what explains, in the final analysis, the jurisdiction of the canonical system over the associations pertaining to them.

According to c. 215, the faithful can associate freely "for purposes of charity or piety, or in order to promote the Christian vocation in the world." This language, which was reached after a good number of changes, traces its most specific development to c. 298 § 1, which speaks about fostering a more perfect life, promoting Christian doctrine, or performing other activities of the apostolate as initiatives for evangelization, undertaking works of piety or of charity, and infusing the temporal order[23] with the Christian spirit, this latter aim being one which, because of its nature, would logically be more appropriate for associations composed of

16. Cf. ibid., pp. 193–196; L. NAVARRO, *Diritto di associazione...*, cit., pp. 3–5.
17. Cf. CODE COMMISSION, "Relatio super priore schemate LEF," p. 83, in *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972), p. 581.
18. Cf. *RN* 40–47; JOHN XXIII, Enc. *Pacem in terris...*, cit., p. 262.
19. Cf. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), p. 130.
20. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 121–128.
21. Cf. P.-J. VILADRICH, "La declaración de derechos y deberes de los fieles," in REDACCIÓN IUS CANONICUM, *El proyecto de la Ley Fundamental de la Iglesia* (Pamplona 1971), p. 146; J. HERVADA, *Elementos de...*, cit., p. 130; H.J.F. REINHARDT, commentary on cc. 209–223, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1987), p. 215/1.
22. Cf. J. HERVADA, *Elementos de...*, cit., p. 131.
23. Cf. H.J.F. REINHARDT, commentary on cc. 209–223..., cit., p. 215/2.

lay people. In summary, what is involved are those ends which fall within the scope of the ecclesial mission of the faithful, insofar as they are Christ's faithful, within the sphere of their legitimate autonomy.[24]

From among all the phenomena of associations, those stand out whose purpose is to live a life based on celibacy, giving of oneself fully and in a communal spirit. These types of entities, because of their special relationship with the life and holiness of the Church, have a particular governance, different from associations of the faithful in a strict sense (cc. 298–329). The *CIC* is concerned specifically with them in part III of book II.[25]

f) The right of association of the faithful entails, in the first place, the right to "*libere condere et moderare consociationes* ad fines caritatis vel pietatis, aut ad vocationem christianam in mundo fovendam," as the text of c. 215 points out (cf. *AA* 19). Associations founded by virtue of this right of freedom are truly the fruit of the initiatives of the faithful, who have, in this regard, the *power* to establish them. Thus, in addition to the case of public associations, whose purpose requires a *mandate* or canonical mission, since they involve—in some cases—participation in the office proper to the Hierarchy (c. 301 § 1), it is the will of its members to come together, by mutual agreement (c. 299 § 1), from whose will the bonds of association uniting them are born, established, and remain, so as to attain certain ecclesial ends. In this way, even though the Hierarchy could perform a series of acts (praise, approval, establishing associations in the form of legal entities, etc.), these acts neither establish nor create these associations inherent to private autonomy. The faithful are the ones who do so, as a result of the communion of their wills, as fruit of the *pactum unionis*, through an authentic juridical transaction, by means of which they may act, with immunity from all external coercion.[26]

Similarly, if the faithful have the right to found associations freely *in Ecclesia*, it is to be understood that they have, at the same time, the right and the power to govern them, since all human communities demand the authority to direct and coordinate the actions of their members (cf. CCC, 1898). This power, similar to that which exists in other freely created minor societies, is actually included in the creation of the association, for which reason it will also originate, at least in an indirect fashion, from the will of its members. Known as the *dominative power* until the discipline now in force—which has since abandoned that term, perhaps so as not to touch on delicate doctrinal issues—this type of power is

24. Cf. J. HERVADA, *Pensamientos de un canonista en la hora presente* (Pamplona 1989), p. 174.

25. Cf. J. HERVADA, *Elementos de...*, cit., pp. 130–131.

26. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 129–130; R. RODRÍGUEZ-OCAÑA, *Las asociaciones de...*, cit., p. 201; J. HERVADA, *Elementos de...*, cit., pp. 130–131; idem, *Pensamientos de...*, cit., p. 174.

essentially different from the power of governance of ecclesiastical authority. It is transmitted to the organs of governance of the association through the act of establishment and its statutes, affecting those aspects of the private life of the members of the association that fall within the scope of the purposes of the association and in which the faithful thus enjoy a just and legitimate autonomy. In this way, except for those cases in which divine law demands intervention of the power of the Hierarchy, authority over the association falls upon the association itself. The faithful themselves comprising the association are the ones who, as indicated in the *CIC*, may freely make changes, directing its activities, improving it, or modifying its statutes, etc.[27].

g) One of the aspects included by the Code concerning the right of association of the faithful (cf. *AA* 19 d), to which c. 215 does not, however, make any explicit reference, is the *ius nomen dandi*, which the faithful possesses in order to join associations already established, whether public or private.[28] Just as the right to establish and govern associations, the right of enrollment demands, at least, immunity from coercion. But this does not mean that every member of the faithful can join that specific association when he or she so desires, given that this right must be in harmony with the legitimate right of admission, which belongs to associations, as set forth in their statutes.[29]

The lack of explicit reference to the right of enrollment in the formulation of the Code is understandable in all other respects, since this right seems obvious once the right to establish associations has been recognized.[30] Perhaps the redactors of the canon believed it appropriate to omit this for reasons of legislative brevity, but, nevertheless, kept in mind that they performed a good part of their task within the framework of the draft of the *LEF*, whose norms adopted only the most essential aspects of the canonical prescriptions, without taking up a detailed development that would more properly be the responsibility of the *CIC*.[31]

h) Those ends which are inherently and specifically secular constitute an intrinsic limit on the right of association of the faithful, which, when they are not *spiritual*, are rather the fruit of the human right to associate and, as such, are governed by civil law.[32] Also involved are those ends that, by presupposing a participation in the mission of the Hierarchy itself, are reserved *natura sua* to ecclesiastical authority, as is the case of promoting public worship or the transmission of Christian doctrine in the

27. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 130–131; J. HERVADA, *Elementos de...*, cit., pp. 130–131; L. NAVARRO, *Diritto di associazione...*, cit., pp. 19–20.
28. Cf. P.A. BONNET, "De christifidelium consociationum lineamentorum, iuxta Schema 'De Populo Dei' Codicis recogniti anni 1979, adumbratione," in *Periodica* 71 (1982), p. 589.
29. Cf. L. NAVARRO, *Diritto di associazione...*, cit., pp. 20–21.
30. Cf. R. RODRÍGUEZ-OCAÑA, *Las asociaciones de...*, cit., p. 203.
31. Cf. ibid.; L. NAVARRO, *Diritto di associazione...*, cit., pp. 20–21.
32. Cf. *Comm* 17 (1985), p. 209.

name of the Church (c. 301 § 1). The clause "fines ... quorum prosecutio non uni Ecclesiae auctoritati natura sua reservatur," by means of which this reservation is formalized, even managed to be recorded in all the known *schemata* of c. 215, including that of 1982. It was only eliminated from it at the end, probably because it already appeared in c. 301 § 1. Associations of the faithful that seek to attain ends of this kind are to be public, and they require a mandate or canonical mission given by the Hierarchy, which would be the one to direct them (cc. 312–314). Even though they may enjoy a certain autonomy, which would prevent the Hierarchy from opposing their legitimate initiatives or from interfering in their internal governance, they are to be subject to the full direction of the competent ecclesiastical authority (c. 315; cf. *AA* 24 e).

i) Another specific limit on the right of association in the Church, extrinsic in this case and affecting both private as well as public associations of the faithful, is the requirement formulated by Vatican II to maintain the proper relationship with the ecclesiastical authority (*AA* 19 d).

This requirement, adopted in an explicit way in the first *schemata* of the canon, should be the subject of some remarks for this reason[33] (even though it may have disappeared from its text). It continues to be present in the most specific regulations of the Code over the right of association (cc. 278 § 2, 299 § 3, 301, 305). This seems, moreover, to be a coherent solution, since, the criticisms of certain authors notwithstanding,[34] the demand of the *debita relatio* with the ecclesiastical authority originates in the principle of communion and is essential. However, it is unnecessary for this requirement to appear as a clause within the right of association, because it is included within the duty of communion, in and of itself, and because c. 223, concerned with the limitations on the exercise of the rights of the faithful, would also be sufficient to imply it. On the other hand, it would be more appropriate for the canons establishing the legal governance of associations to apply the aforementioned requirement, given that the proper relationship with the ecclesiastical authority acquires diverse forms, depending on the type of association involved.[35]

What has been provided for in *Apostolicam actuositatem* 24, however, is to be applied to all associations, whether public or private: "The hierarchy should promote the apostolate of the laity, provide it with spiritual principles and support, direct the conduct of this apostolate to the common good of the Church, and attend to the preservation of doc-

33. Cf. O. GIACCHI, "Relazione sulla 'Lex Ecclesiae Fundamentalis,'" in *"Lex fundamentalis Ecclesiae." Atti della tavola rotonda a cura di Attilio Moroni (Macerata, 12–October 13, 1971)* (Milan 1973), pp. 32ff; F. FINOCCHIARO, "Intervento sulla 'Lex Ecclesiae Fundamentalis'," in ibid., pp. 65ff.

34. Cf. M. CONDORELLI, "I fedeli nel nuovo Codex Iuris Canonici," in *Le nouveau Code de Droit Canonique. Actes du V Congrès International de Droit Canonique* (Ottawa 1986), I, pp. 331ff and 342.

35. Cf. L. NAVARRO, *Diritto di associazione...*, cit., p. 26.

trine and order." This is the minimum *debita relatio* that any association in the Church should possess.[36] Therefore, it is always within the responsibility of the Hierarchy to:

—offer those principles and spiritual assistance, to the extent that associations so require it;

—order the exercise of the apostolate for the common good of the Church, by fostering unity within the diversity of apostolates and through suitable norms that channel the exercise of the right of association (cf. *CD* 17 a; *AA* 26);

—ensure that right doctrine and order (c. 305) are preserved, but not in the sense of meddling in the internal affairs of governance of the associations.[37]

j) Private associations (cc. 321–326), in which particular initiative has its fullest space, are without doubt the site of the most direct application of this right of the faithful.[38] However, the freedom of association also exerts an influence, in varying degrees, on the creation and governance of the remaining bodies of associations enumerated in the *CIC*, even in public associations established on the basis of a prior private initiative, in which the *ius nomen dandi* is to be taken into account and in which, furthermore, there always exists—as we have already seen—a certain margin of autonomy (c. 315). In conclusion, it is true that freedom of association of the faithful is to be observed, not only to the extent that it presupposes a strict right of the faithful to create and to modify associations in order to pursue given ecclesial purposes, but it should also be considered at the same time, as a fundamental principle of inspiration for the body of all rules set forth in the canonical system on this subject.

2. *The right to meet*

a) Together with the right of association, c. 215 adopts the right to hold meetings, through which the right of the faithful to congregate in the future is recognized, for the purpose of attaining the common ends of charity or piety, or for fostering the Christian vocation in the world—in other words, for the same purposes that the baptized can pursue by virtue of their right to associate.

Both rights coincide equally in their founding principles and in their limitations, with appropriate adaptations. Thus, for example, similar to what occurs with the right of association, whose inherent purpose does not include those ecclesial ends which *natura sua* are reserved to the au-

36. Cf. ibid., pp. 24–25.
37. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 131–132.
38. Cf. J. MANZANARES, commentary on c. 215, in *Salamanca Com.*

thority of the Church, the right of the faithful to meet does not include, as part of its own intrinsic purpose, those meetings convened by the Hierarchy for its own purposes (liturgical acts, Councils, etc.).[39] Due relationship with the ecclesiastical authority is to be observed in meetings as well as in associations.

b) However, the right of association and the right to hold meetings, their similarities notwithstanding, should not be confused. They are two distinct rights, as is evident in the tone of the canon and as has also been clearly demonstrated throughout the drafting process.[40] While it is obviously true that the right of association necessarily implies the right to hold meetings, in order to pursue the ends of the association which one has joined (c. 309), it is evident that it is one thing to hold a meeting and quite another, to become a member of an association; and that the right to hold meetings can be exercised outside the formal setting of any association, in encounters or assemblies of an occasional nature,[41] as can be deduced from cc. 94 and 95.[42]

In contrast to what occurs with the right of association, the right of the faithful to hold meetings is barely developed in the CIC. The sole clear reference to it can be found in c. 95, already cited, which discusses the rules or norms that are to be observed in meetings or celebrations.

39. Cf. J. HERVADA, *Elementos de...*, cit., p. 130.
40. Cf. H. SCHNITZER, "Allgemaine Fragen des kirchlichen Vereinsrechts," in *Handbuch des katholischen Kirchenrechts* (Regensburg 1983), p. 462; F.X. DE AYALA, "O Direito de reunição," in *Ius Canonicum* 26 (1986), pp. 359–402.
41. Cf. G. FELICIANI, *Il popolo...*, cit., p. 31.
42. Cf. H.J.F. REINHARDT, commentary on cc. 209–223..., cit., pp. 215/3–4.

216 **Christifideles cuncti, quippe qui Ecclesiae missionem participent, ius habent ut propriis quoque inceptis, secundum suum quisque statum et condicionem, apostolicam actionem promoveant vel sustineant; nullum tamen inceptum nomen catholicum sibi vindicet, nisi consensus accesserit competentis auctoritatis ecclesiasticae.**

Since they share the Church's mission, all Christ's faithful have the right to promote and support apostolic action, by their own initiative, undertaken according to their state and condition. No initiative, however, can lay claim to the title 'catholic' without the consent of the competent ecclesiastical authority.

SOURCES: *LG* 37; *AA* 24, 24, 25; *PO* 9

CROSS REFERENCES: cc. 96, 98, 114–123, 199, 1° et 3°, 204 § 1, 208–215, 221 § 1, 222–224, 225 § 2, 275 § 2, 278, 298–311, 321–329, 394, 528 § 1, 800 § 2, 801, 803 § 3, 808

COMMENTARY

Daniel Cenalmor

1. The faithful, "among whom there remains, however, a true equality between all with regard to the dignity and to the common activity … in the building up of the Body of Christ" (*LG* 32 c), have frequently responded to their vocation to the apostolate by undertaking, throughout the course of history, multiple evangelizing initiatives of the most diverse nature (schools, publishing houses, clinics, etc.). These apostolic enterprises, structured and inspired so as to preach the Gospel and to implant or assist in the growth of the Church in the concrete existence of mankind within the missionary territories, as well as in settings of long-standing Christian tradition, have been proposed by Vatican II as specific modes of participating in the mission of the Church, open to all members of the people of God (cf. *PO* 9 b; *PC* 20; *AA* 24; *AG* 6 c). But, when promulgating the present canon, the legislator has wished to state that these initiatives are, in addition, a response to a true right of the baptized, with everything that this assumes.

2. Identical to the duty and right to the apostolate (c. 211) from which it can be considered to have been derived, the right to promote ap-

ostolic actions is rooted, first and foremost, in baptism,[1] and then in confirmation, the sacrament by means of which all the faithful are called to participate in the saving mission of the Church (cf. *LG* 33 b). From this perspective, it may be considered an original right, independent of any possible invitation of the Hierarchy to collaborate actively in the responsibility that is inherent to it. It may also be inferred from this that the ecclesiastical authority ought not to hinder or impede the exercise of this right, as if apostolic initiatives were within its exclusive domain.[2]

The words "secundum suum quisque statum et condicionem," with which the canon qualifies the *ius propriis inceptis apostolicam actionem promovendi*, do not affect, in any way whatsoever, the fundamental equality of all the faithful in regard to this right. In fact, notwithstanding the fact that this phrase—present in one way or another in this prescription from the first versions in the draft of the *LEF*—might partially obscure the common character of the right to promote apostolic actions, when stressing the effect that diversity of personal conditions in the Church[3] can produce, it should not be believed that sacred ministers, the religious and the laity have, for this reason, a different right to promote apostolic actions. All have this same original right, *ratione baptismatis*; in the same way, all have the same original right to participate in the mission of the Church, even though each member of the faithful may indeed exercise it, in accordance with the mission incumbent upon him or her to pursue within the mystical body of Christ.

Thus, the laity, together with the general obligation and the right to work, both individually and collectively, "so that the divine message of salvation may be known and accepted by all people throughout the world" (c. 225 § 1), shall have "according to the condition of each, the special obligation to permeate and perfect the temporal order of things with the spirit of the Gospel. In this way, particularly in conducting secular business and exercising secular functions, they are to give witness to Christ" (c. 225 § 2). On the other hand, clerics, whose specific ecclesial mission consists in their sacramental mission when performing sacred functions,[4] fulfill, above all else, the tasks of their pastoral ministry in a faithful and untiring way (c. 276 § 2,1°). Additionally, the members of the institutes of sacred life are to contribute to the saving mission of the Church, in accordance with the purpose and spirit of their institute (c. 574 § 2).

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1. Cf. CodCom, *Relatio super priore schemate LEF*, pp. 83–84, in *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972), pp. 581–582; P.-J. VILADRICH, "La declaración de derechos y deberes de los fieles," in REDACCIÓN IUS CANONICUM, *El proyecto de la Ley Fundamental de la Iglesia* (Pamplona 1971), p. 147.
2. Cf. G. FELICIANI, *Il popolo di Dio* (Bologna 1991), p. 30.
3. Cf. P.-J. VILADRICH, "La declaración de derechos y deberes...," cit., p. 147; G. FELICIANI, *Il popolo...*, cit., p. 30.
4. Cf. T. RINCÓN, commentary on the chapter "De clericorum obligationibus et iuribus," in *Pamplona Com.*

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3. The right to promote apostolic activity is closely related to the right of association (c. 215), given that the faithful are accustomed to carrying out their evangelizing initiatives in a collective manner, that is, by exercising at the same time their right of association for purposes of the apostolate.[5] However, the fact that these two rights frequently coincide with each other should not lead us to confuse them: on one hand, because evangelizing initiatives can also be individual;[6] and on the other, because associations of the faithful may have other purposes that are not immediately apostolic, such as the sanctification of their members.[7]

4. In a manner similar to what has occurred with the right of association (see commentary on c. 215), the right of the faithful to *promote* and *sustain* apostolic activities includes the right to undertake them as well as the right to join those already in existence, and the freedom of regulation and of governance.[8]

In order to exercise this right, the same limitations affecting the right of association should also be kept in mind, applicable to this specific case. In other words, assuming that apostolic activities, by their very nature, will also provide *fines spirituales*—even though they may have other, uniquely and specifically secular purposes to which the faithful must then respond in regard to the civil order—those purposes which, because they presuppose participation in the mission itself of the Hierarchy, are reserved *natura sua* to the authority of the Church are to be excluded from this right (c. 301 § 1). Along with this, the apostolic activities promoted by the faithful should observe the *debita relatio* required by the principle of communion, for which reason it is incumbent upon the Hierarchy: "to furnish it with principles and spiritual assistance, to direct the exercise of the apostolate towards the common good of the Church, and to ensure that doctrine and order are safeguarded" (*AA* 24 a).

Apostolic activities which were undertaken within the framework of the civil order and which do not require canonical approval, shall at least maintain that minimum relationship with the Hierarchy. However, the intervention of the authority of the Church shall be greater whenever these activities are constructed as a public association of the faithful. Such initiatives are to be subject, in all cases, to the norms, civil or canonical, applicable to the legal system of governance under which they were created.

5. As the canon specifies, no apostolic initiative can lay claim, by itself, to the title of *Catholic* without the consent of the competent ecclesiastical authority. This requirement, taken textually from *Apostolicam*

5. Cf. G. FELICIANI, *Il popolo...*, cit., p. 31; J. HERVADA, commentary on c. 216, in *Pamplona Com.*

6. Cf. CodCom, *Relatio super priore schemate LEF*, p. 84, in *Legge e Vangelo...*, cit., p. 582; P.-J. VILADRICH, "La declaración de derechos y deberes...," cit., p. 147.

7. Cf. G. FELICIANI, *Il popolo...*, cit., p. 31.

8. Cf. J. HERVADA, commentary on c. 216, in *Pamplona Com.*

actuositatem 24 c, finds justification for its existence in the special responsibility of the Hierarchy to ensure that those activities that might implicate its authority, by the use of this name, respond to it with effectiveness. And the *CIC*, in subsequent provisions, has revealed itself to be attentive to imposing this requirement expressly on the subject of associations (c. 300), schools (c. 803 § 3) and Catholic universities (c. 808).[9] In addition, the institutions that fit this description, apart from the need for the consent described above, are to be subject to the ecclesiastical system of rules which has been promulgated for them.

9. Cf. G. FELICIANI, *Il popolo...*, cit., p. 31.

217 **Christifideles, quippe qui baptismo ad vitam doctrinae evangelicae congruentem ducendam vocentur, ius habent ad educationem christianam, qua ad maturitatem humanae personae prosequendam atque simul ad mysterium salutis cognoscendum et vivendum rite instruantur.**

Since Christ's faithful are called by baptism to lead a life in harmony with the gospel teaching, they have the right to a christian education, which genuinely teaches them to strive for the maturity of the human person and at the same time to know and live the mystery of salvation.

SOURCES: c. 1372 § 1; *GE* 2

CROSS REFERENCES: cc. 96, 98, 199, 1° et 3°, 204 § 1, 208–210, 213, 215–216, 221 § 1, 222–224, 226, 229, 231 § 1, 232, 244, 279, 386 § 1, 392 § 2, 528 § 1, 659 § 1, 661, 722 § 2, 724, 735 § 3, 756–762, 767–771, 773–780, 789, 793, 794–832, 835 § 4, 843 § 2, 851, 2°, 913–914, 1027, 1136, 1366

COMMENTARY

Daniel Cenalmor

1. When considering formation, Vatican Council II has already clearly taught that the Christian, in addition to having "a grave obligation to Christ, one's Master, to grow daily in one's knowledge of the truth one has received from him, to be faithful in announcing it and vigorous in defending it without having recourse to methods which are contrary to the spirit of the Gospel" (*DH* 14 d), possesses the right to a Christian education (*GE* 2). This is a right that has been formalized in its most basic and general aspects in this prescription, originating in the *LEF*, and has barely undergone any change since its first version.

According to this canon—whose primary source of inspiration is *Gravissimum educationis* 2[1]—the right of the faithful to a Christian education is rooted in, and receives its justification from, that call all receive "through baptism to lead a life consonant with evangelical doctrine," even though it may also be inferred from the obligation to be educated as a Christian; and, more radically still, from the common vocation to sanctity

1. Cf. CodCom, "Relatio super priore schemate LEF," p. 85, in *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972), p. 583.

and the resulting duty to strive "to lead a holy life, and to promote the growth of the Church and its continual sanctification" (c. 210), and even the duty and the right to live in communion with the Church (c. 209 § 1). Thus, it is clear that the faithful have need of a suitable Christian education, both in order to be educated and to live truly as disciples of Christ, until they achieve the perfection to which they have been called, and develop the apostolic mission in its fullness that is their responsibility, such as to preserve and strengthen duly their communion with the Church.

The right to receive the assistance of spiritual riches from their Pastors, primarily the word of God and the sacraments (c. 213), is also related to this right, but in a different way, since the need of that assistance, rather than explaining the right to a Christian education, is to be understood as the essential way in which it can be fulfilled.

2. The purpose of the right to a Christian education in the Church is the teaching of Catholic doctrine at all levels: instruction in the catechism or fundamental instruction, preaching, and the deepest explanation of the Gospel message. From that perspective, the *CIC*, when speaking about the right of the laity to receive formation in doctrine, has also included in it "the right to acquire that fuller knowledge of the sacred sciences which is taught in universities or ecclesiastical faculties or in institutes of religious sciences, attending lectures there and acquiring academic degrees" (c. 229 § 2). It was not necessary to state this right explicitly for other members of the faithful, since it was already recognized without opposition for priests and religious. The *CIC*, when preached expressly to lay people, has come to emphasize in an indirect manner that it is applicable to all members of the people of God, without discrimination whatsoever by virtue of state, sex, or any other condition.[2]

At these three levels, the right to a Christian education carries with it the possibility of receiving from the Church "the mystery of Christ completely and faithfully" (c. 760), or as *Catechesi tradendae* 30 teaches, "the word of faith" "undistorted, not falsified, undiminished, but complete and full, in all its rigor and with all its effectiveness."[3] In this way, the faithful "can use those relevant channels in order to exercise their right to the right doctrine in regard to those ministers of the Word that are not teaching it properly."[4]

3. Together with the preceding, it is worthwhile to stress that a Christian education is not to be limited to the transmission of purely theoretical content, but also that this right includes appropriate instruction "ad maturitatem humanae personae prosequendam atque simul ad mysterium salutis cognoscendum et vivendum," as this prescription so aptly indicates.

2. Cf. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), pp. 121–122; idem, commentary on c. 217, in *Pamplona Com.*
3. Cf. G. FELICIANI, *Il popolo di Dio* (Bologna 1991), p. 38.
4. Cf. J. HERVADA, *Elementos de...*, cit., p. 122.

In fact, any education—and therefore, a Catholic education as well—is intended to achieve the formation of the whole person "in regard to his ultimate purpose and, simultaneously, to the common good of society."As a result, it is directed at harmoniously developing "the physical, moral and intellectual talents" needed to attain "a greater sense of responsibility and the correct use of freedom," and to be prepared to participate actively in social life (c. 795).[5] Additionally, a Christian education is to strive, above all, to attain the religious and moral formation of the faithful from infancy, as c. 1372 § 1 of the *CIC*/1917 has already indicated, which is one of the sources cited for this canon. All of this is not only transformed—as the Council has taught—into the fact that "those who have been baptized, as they are gradually introduced to a knowledge of the mystery of salvation, become daily more appreciative of the gift of faith which they have received," but also into the fact that they are likewise learning "to adore God the Father in spirit and in truth (cf. Jn 4:23), especially through the liturgy. They should be trained to live their own lives in the new self, justified and sanctified through the truth (Eph 4:22–24). Thus they should come to true manhood, which is proportioned to the completed growth of Christ (cf. Eph 4:13), and make their contribution to the growth of the Mystical Body" (*GE* 2). These eminently practical aspects should be considered when exercising this right.

All in all, the right to receive a Christian formation includes various aspects which are inseparably united: spiritual formation (*OT* 8–12; *AA* 29; *PC* 18), formation in doctrine (*OT* 13–18; *PO* 19; *AA* 29; *PC* 18); human formation (*PO* 3; *OT* 11; *AA* 29), and apostolic formation (*OT* 19–22; *PO* 19; *AA* 28–32; *PC* 18). Also it would thus bear the fruit of attaining faith, which, when illuminated by doctrine, is made explicit, living and functioning (*CD* 14 a), such that all members of the Church, illuminated by Christian wisdom and in faithful observance of the doctrine of the Magisterium, cultivate their own vocation according to the Gospel and assume that role which corresponds to them in the total mission of the people of God.[6]

4. The general duty to act on this right of the baptized falls within the purview of the ecclesiastical community as a whole (cc. 747 § 1, 794 § 1), and to all the faithful, who are called upon to participate actively, according to their own condition, in the prophetic function of Christ (c. 204 § 1). However, the specific obligations that this right entails depend on the precise educational responsibilities that are acquired through a variety of titles, stressing foremost those of parents and those of the ecclesiastical authority,[7] which should seek to arbitrate, offer, or facilitate the means

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5. Cf. *GE* 1; G. FELICIANI, *Il popolo...*, cit., p. 38.
6. Cf. *PO* 6 b; *GS* 43 b; A DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos* (Pamplona 1987), pp. 100–101.
7. Cf. G. FELICIANI, *Il popolo...*, cit., p. 38.

needed to guarantee the formation of the faithful (preaching, teaching of the catechism, instruction in doctrine, etc.).[8]

The *CIC* in c. 226 § 2 takes up the duty and right of parents to give their children a Christian education, and also in cc. 774 § 2, 793 § 1, and 796–799. Canon 226 § 2 originated in the draft of the *LEF*, which in turn was inspired by *Gravissimum educationis* 3 and c. 1372 § 2 of the *CIC*/1917. Even though it may be classified today among the obligations and rights of lay people—perhaps because this is its most appropriate place, at least in the Latin *CIC*—it was positioned in all the outlines of the *LEF* as § 2 of the canon that we are now discussing, due to the close relationship which exists between both prescriptions. The correlative duty for this ecclesial right of parents falls, in the final analysis, upon the Hierarchy and Catholic teaching institutions, but not upon the State or upon civil teaching institutions. Thus, even though there may also exist a right of parents to educate their children in a Christian manner in regard to these authorities (c. 793 § 2), it does not enter into this right, but rather is an aspect of the natural right of religious freedom in connection with the natural right to education and to culture.[9]

5. Insofar as the specific duties of the ecclesiastical authority in relation to this right are concerned, there are many references in the Councils and in the Code which we could cite. However, it is merely enough to recall the general norm of c. 794 in this context, where it establishes that "Pastors of souls have the duty of making all possible arrangements so that all the faithful may avail themselves of a catholic education." And there are other, more specific norms as well, such as that of c. 386 § 1, which points out that the diocesan bishop "is bound to teach and illustrate to the faithful the truths of faith which are to be believed and applied to behavior. He is himself to preach frequently"; and he is also to ensure "that the provisions of the canons on the ministry of the word, ... are faithfully observed, so that the whole of Christian teaching is transmitted to all." Canon 528 § 1, also, speaks about the obligation of the parish priest "to ensure that the word of God is proclaimed in its entirety to those living in the parish."[10]

In all other respects, throughout the entire book III of the *CIC*, which itself concentrates on the function of teaching, other duties and rights of the Hierarchy, of the other members of the faithful, and of the Catholic teaching institutions are stated specifically in relation to their responsibility to offer the means needed for the baptized to attain the greatest formation possible, these being means to which the faithful are entitled.[11]

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8. Cf. A DEL PORTILLO, *Fieles y laicos...*, cit., p. 101.
9. Cf. J. HERVADA, commentary on c. 217, in *Pamplona Com.*
10. Cf. H.J.F. REINHARDT, commentary on cc. 209–223, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1987), p. 217/2; G. FELICIANI, *Il popolo...*, cit., pp. 38–39.
11. Cf. J. HERVADA, *Elementos de...*, cit., p. 122.

6. As we pointed out at the beginning of this commentary, there also exists a generic duty to receive a Christian formation (*DH* 14 d), which, in and of itself, is of a moral nature. But this obligation is not always reduced to the scope of conscience, since it can be juridically demanded in various cases, at least as a necessary premise for certain acts, as occurs, for instance, with the minimum knowledge needed to be admitted to the Eucharist (cc. 913–914), or in order to receive the sacrament of orders (cc. 378, 1029, 1032, 1039, 1042,3°). And in specific degrees, it can, in addition, be given explicit manifestation through the voluntary assumption of forms of life or of the apostolate which such formation.[12]

12. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 99–100; J. HERVADA, *Elementos de...*, cit., p. 122.

218 **Qui disciplinis sacris incumbunt iusta libertate fruuntur inquirendi necnon mentem suam prudenter in iis aperiendi, inquibus peritia gaudent, servato debito erga Ecclesiae magisterium obsequio.**

Those who are engaged in fields of sacred study have a just freedom to research matters in which they are expert and to express themselves prudently concerning them, with due submission to the magisterium of the Church.

SOURCES: *GE* 10; *GS* 62; *SapChr* 39

CROSS REFERENCES: cc. 96, 98, 199, 1° et 3°, 204 § 1, 208–210, 212 §§ 1 et 3, 213, 217, 220, 221 § 1, 223–224, 227, 229 §§ 2 et 3, 386 § 2, 749–754, 809–810, 812, 218, 823–833, 1364, 1371

COMMENTARY

Daniel Cenalmor

1. The freedom of research and the freedom to express one's own scientific opinion prudently are special forms which the right to information and the right to opinion within the Church (c. 212 § 3) adopt, respectively, when they are applied to the sacred sciences. They have been considered by the legislator within the same right because in practice they are inseparable, since the scientific endeavor always entails a continuous exchange of findings and opinions.[1]

The right to freedom of research and opinion in the sacred sciences appears systematically as a follow up to the right to a Christian education, undoubtedly for one basic reason: the relationship existing between them, not only because they deal with the same subject—that is, formation in the Church[2]—but also because they are closely connected to each other.

In fact, in order to be able to acquire higher knowledge of the sacred sciences (c. 229 § 2), to which all the faithful are to have access by virtue

1. Cf. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), p. 142.

2. Cf. P.-J. VILADRICH, "La declaración de derechos y deberes de los fieles," in *Redacción Ius Canonicum, El proyecto de la Ley Fundamental de la Iglesia* (Pamplona 1971), pp. 148–149.

of the right to a Christian education (see commentary on c. 217),[3] a just freedom of research, thought and word is needed in these sciences, among other things.[4] For this reason, Vatican Council II, after expressing the wish that many lay people devote themselves to the study of the ecclesiastical sciences and that they immerse themselves in them, determined under number 62 of *Gaudium et spes* that, precisely in order to bring this task to fruition, it was recognized that the faithful "sive clericis sive laicis, iusta libertas inquirendi, cogitandi necnon mentem suam in humilitate et fortitudine aperiendi en iis in quibus peritia gaudent." Such recognition would be formalized in the *CIC* through this right, which was conceived in the draft of the *LEF*, where it even appeared, in its first *schemata*, following the *ius ad institutionem in disciplinis sacris*, within that same canon.[5]

2. Therefore, the right to freedom of research and opinion in the sacred sciences can be inferred, at least in part, from the right to a Christian education, even though it can be more directly grounded in the nature itself of the scientific endeavor, which requires freedom[6] and a continuous comparison, examination, and exchange of findings and opinions,[7] and also in the principles from which the more general rights to information and opinion in the Church are derived: the natural right to freely inquire into the truth and to express one's own opinion,[8] active participation of all the faithful in the mission of the people of God, and the *sensus fidei fidelium* and the charismas that are genuine (see commentary on c. 212 § 3).

3. As the canon indicates, all the faithful "qui disciplinis sacris incumbunt" possess this right, including those who teach a theological discipline in an institute of higher studies (c. 812) under the mandate of the competent ecclesiastical authority, and those who, for any other reason, also cultivate these disciplines.[9] The exclusive reference to subjects of this kind is logical, furthermore, since any genuine scientific investigation entails commitment to these sciences, because of the long- and short-term preparation it demands. But that does not mean to deny the faithful the freedom of research and opinion in the sacred sciences, inasmuch as all may acquire fuller knowledge about them (c. 229 § 2) and thus may undertake their investigative work by relying on this right.

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3. Cf. CodCom, "Relatio super priore schemate LEF," p. 84, in *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972), p. 582.
4. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos* (Pamplona 1987), pp. 102–103.
5. Cf. CodCom, *Textus prior LEF*, c. 19, and *Textus emendatus LEF*, c. 18, in *Legge e Vangelo...*, cit., p. 505.
6. Cf. G. FELICIANI, *Il popolo di Dio* (Bologna 1991), p. 34.
7. Cf. J. HERVADA, *Elementos...*, cit., p.142.
8. Cf. JOHN XXIII, Enc. *Pacem in terris*, April 11, 1963, in *AAS* 55 (1963), p. 260.
9. Cf. H.J.F. REINHARDT, commentary on cc. 209–223, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1987), p. 218/1.

4. Freedom of research in the Church demands immunity from coercion and also involves the right of the faithful to learn about those issues of interest to them as they pertain to the sacred sciences which have a certain public character. Moreover, freedom to state one's own scientific opinion, encompassing both the written and the spoken word, refers above all to the two most typical channels through which this activity tends to be pursued within the ecclesiastical framework: higher-level education in the sacred disciplines and scientific dialogue through the usual means.[10] This freedom—which is correlative to the right of scientists to learn about the opinions of their colleagues[11]—implies a guarantee not to become the direct or indirect object of sanctions and disciplinary measures as a result of the act of expressing a theological, canonical, or any other scientific opinion, as long as such opinion does not constitute a delict, in other words, as long as it is in agreement with the formal teachings of the Magisterium.[12] It is the same with the right to express an opinion in general (c. 212 § 3), which even comes to constitute an authentic moral duty,[13] whose force depends on the specific responsibility which one holds in order to state an opinion, which is, in turn, influenced by the science, skill, and prestige of the expert.

5. Without respect for the freedom of research and opinion in the sacred sciences, the faithful who are students of these disciplines may find themselves confronted with the practical impossibility of pursuing their mission in the midst of the ecclesial community; all the people of God would thus see themselves deprived of an irreplaceable support necessary to deepen their understanding the faith, and that same authority of the Magisterium, without the contribution of theological investigation, would encounter more than a few obstacles in exercising its function.[14]

But it could be equally dangerous not to bear in mind, when exercising this right, the limitations on which its correct application depends and which are set forth in the formula of the canon.

In the first place, the term *iusta* serves to emphasize here that this right is not absolute, thereby avoiding excessive interpretations. Freedom of investigation and of scientific opinion should always be just: what is unjust is never a right.[15] Therefore, this prescription cannot be invoked if a given behavior were to injure the legitimate interests of other members of the faithful, or any other due limitation were exceeded.

The adverb *prudenter*, by which the freedom of opinion is colored, "means that the right should be exercised in a manner consistent with sci-

10. Cf. J. HERVADA, *Elementos de...*, cit., p.142.
11. Cf. ibid.
12. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 103.
13. Cf. CDF, Instr. *Donum veritatis*, April 24, 1990, no. 30.
14. Cf. G. FELICIANI, *Il popolo...*, cit., p. 34.
15. Cf. J. HERVADA, commentary on c. 218, in *Pamplona Com.*

entific honesty: does not state as inconclusive those conclusions which have not been sufficiently proven, not to present as a thesis what is merely a hypothesis, etc. Similarly, it includes the duty to use only means of scientific investigation (specialized journals, scientific congresses, etc.) in order to express opinions which, when cast to public opinion, or expressed while performing a teaching function, could be a cause of confusion or of scandal."[16]

Finally, the expression "servato debito erga Ecclesiae magisterium obsequio" constitutes an insurmountable limitation, directly connected to the obligation of communion (c. 209 § 1). This means that this right should be exercised within the full acceptance of the Magisterium, according to its various forms of expression and obligatory nature (cc. 749–754). Any investigative and teaching work in the sacred sciences, and more specifically in theology, which were to disregard the ecclesiastical Magisterium as a standard proximate to the truth would be defective from the outset.[17] Thus, "in regard to the doctrinal propositions authoritatively set by the Magisterium, there is no freedom of opinion. In the Church, in which one of the bonds of communion is faith, the right to hold and to express publicly one's own opinions is strictly limited to what can be considered as opinion. In all other respects, one's own *individual* opinion is transformed—if stubbornly held—into heresy or disobedience, which cannot be protected by any fundamental right."[18]

6. The "dissent" or public attitude of opposition to the teachings of the Magisterium, based on calculated answers and controversies expressed through the means of social communication, insofar as it is assumed to be an attack on the due submission to the Magisterium of the Church and on the obligation of communion (c. 209 § 1), is never legitimate and is to be avoided by all. Such behavior "*is opposed to ecclesial communion and to a correct understanding of the hierarchical constitution of the people of God.* Opposition to the teaching of the Pastors cannot be seen as a legitimate expression, of Christian freedom nor of the diversity of the Holy Spirit's gifts. In this case, the Pastors have the duty to act in conformity with their apostolic mission, demanding that *the right of the faithful* to receive Catholic doctrine in its purity and integrity always be respected" (*VSp* 113).

Catholic theologians cannot allege, therefore, the right to freedom of research and opinion—which, as with all other rights, is a right *in* the Church and not a right *before* the Church[19]—in order to demand a special statute releasing them from all the aforementioned duties incumbent upon

16. Cf. ibid., p. 177.
17. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 105–106; PIUS XII, Enc. *Humani generis*, August 12, 1950, in *AAS* 42 (1950), pp. 567–569; *SapChr*, art. 26.
18. J. HERVADA, commentary on c. 218, in *Pamplona Com.*
19. Cf. H.J.F. REINHARDT, commentary on cc. 209–223..., cit., p. 218/1.

all the faithful, since they are, first and foremost, members of the Church. Even more so, because of their mission, they have a particular responsibility, and therefore, specific obligations, in regard to the people of God from the moment in which they participate, although with a different kind of authority, in the office of Pastors in the area of doctrine.[20] For Catholic theologians, the duty of conducting their investigations in communion with the entire Church derives from the condition of being faithful and from that specific responsibility, because the freedom of research and opinion cannot, in any event, contradict that sense of faith inherent to the entire Christian people,[21] nor the duty to respect the people of God and to commit oneself to offering "a teaching that does not injure the doctrine of faith, not even to the smallest degree."[22] Pluralism in the Church can only be accepted in regard to the way in which the one and only faith is explained.[23]

The situation of those who teach the theological disciplines by virtue of a mandate of an ecclesiastical authority (cc. 812, 818) is special since, due to the official nature of their roles and of their commitment to teach in the name of the Church, they are to be singled out for the rectitude of their doctrine (c. 810 § 1), and they must clearly differentiate in their teaching duties that which is only their opinion or the object of their personal research.[24]

7. In view of what is stated above, it is logical to infer that dissension can never be accepted as right,[25] since it is clear that there exists no right to dissension in matters of faith, which would be against the primary and most basic duty to keep the profession of faith intact, as well as against the duty to respect the right of other members of the people of God to receive the message of the Church in all its purity and integrity.[26] While "dissent" rests on a magisterial teaching capable of being reformed and does not affect the principle of *unitas veritatis*, it would be unacceptable, because at the very least, it would injure the principle of *unitas caritatis*, which must be protected,[27] and by opposing the magisterium of the Pastors, it would cause serious spiritual ills, evident, above all, in the so-called *parallel magisterium*. "In effect, whenever 'dissent' manages to extend its influence until the point of swaying common opinion, it tends to

20. Cf. PAUL VI, *Discurso a los miembros de la Comisión Teológica Internacional*, October 11, 1973, no. 4; *AAS* 65 (1973), p. 557.
21. Cf. G. FELICIANI, *Il popolo...*, cit., p. 33.
22. Cf. *VSp* 113; CDF, Instr. *Donum veritatis*, May 24, 1990, no. 11.
23. Cf. G.F. GHIRLANDA, "Doveri e diritti dei fedeli nella communione ecclesiale," in *La Civiltà Cattolica* 136 (1985), p. 31.
24. Cf. ibid., p. 30.
25. Cf. J.A. FUENTES, "El derecho a recibir y a transmitir el mensaje evangélico. A propósito de la instrucción sobre 'la vocación eclesial del teólogo'," in *Fidelium Iura* 3 (1993), pp. 443–446.
26. Cf. G.F. GHIRLANDA, "Doveri e diritti...," cit., pp. 30–31.
27. CDF, Instr. *Donum veritatis*, May 24, 1990, no. 26.

constitute a rule of action, which does not cease to disrupt the people of God gravely and to lead to the scorn of true authority."[28]

In the event that Catholic theologians should encounter serious difficulties in adopting a magisterial teaching that is capable of being reformed, for reasons which seem well founded to them, the attitude of the latter should be one of fundamental availability to receive the teaching of the Magisterium loyally. If these difficulties persist, notwithstanding their true efforts, it would become their duty "to inform the magisterial authorities of the problems raised by the teaching in and of itself, the justifications proposed in response to it, or also the way in which it has been presented," but avoiding recourse to the means of communication rather than addressing themselves directly to the responsible authority.[29] Disagreement on undefined doctrinal issues, therefore, can be admitted to a certain degree, but always accompanied by respect toward the authority and the exercise of prudence, thereby avoiding scandal and confusion among the faithful.[30]

8. The Hierarchy, when exercising its duty-right to intervene in order to protect the faith of the people of God, may impose burdensome measures at times, such as declaring that certain writings are not in accordance with the doctrine of faith or by removing theologians who have distanced themselves from a doctrine which their canonical mission or mandate to teach has been entrusted.[31] In extreme cases in which withdrawal from the one faith transmitted by the Apostles is done obstinately, this may include excommunication, by declaring that these are the circumstances in which the theologian, in fact, finds himself/herself, when contradicting ecclesial communion.[32]

However, ecclesiastical authority also ought to be careful when it simultaneously recognizes and protects the just freedom of research and opinion of those who devote themselves to the sacred sciences, never forgetting that these tasks, when properly performed, are essential in the Church, and truly contribute to the full and faithful announcement of the saving truth and to the preservation of the correct profession of faith.[33]

The application of norms regarding the prior review and possible disapproval of writings connected to faith and customs (cc. 823–832), pursuant to this right, should lead Pastors not to deny permission to publish a book, essay, or scientific study in general, except when it contains ideas

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28. Ibid., no. 34.
29. Cf. ibid., nos. 28–30.
30. Cf. G.F. GHIRLANDA, "Doveri e diritti...," cit., p. 30; J.H. PROVOST, commentary on c. 212, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 145; idem, commentary on c. 218, in ibid., p. 152.
31. Cf. CDF, Instr. *Donum veritatis*, May 24, 1990, no. 37.
32. Cf. G.F. GHIRLANDA, "Doveri e diritti...," cit., p. 31.
33. Cf. ibid., p. 29.

contrary to truths already established by the Magisterium of the Church or when they constitute an attack on Christian morals; or to circumscribe that permission to the most suitable means of publication (scientific journals, similar collections, etc.).In some cases an opinion which can be issued without any risk in a scientific journal, or before an audience of experts, could be considered scandalous if it were published in a magazine of widespread circulation or before an ill-prepared audience, thereby leading to confusion and harm to souls.[34]

In any event, an author who has submitted his writings to prior review cannot be, nor should be, condemned because there is nothing worthy of condemnation in this behavior, since it is not possible to consider the exercise of a right, when exercised in accordance with those channels established by law, a delict. It is quite another thing entirely that ideas could be declared false or unsuitable by the ecclesiastical authority, but if the author has proceeded with deference towards the Hierarchy, no social reproach of any kind, much less a sanction, should be imposed on that person. This guarantee should be a stimulus for authors to submit their writings to ecclesiastical censure.[35]

In all other respects, the procedure to be followed to evaluate and possibly disapprove opinions or writings of an author which appear to be heterodox or dangerous—over which the supreme authority in the universal Church, which habitually pursues this task through the CDF, has competence; and within the particular sphere, the bishops have competence, whether on an individual basis or gathering in particular Councils or Bishops' Conferences (c. 823)—is to give the interested party the possibility of eliminating possible misunderstandings , and if the subsequent judgment were condemnatory, it would fall, not on the person of the theologian himself/herself, but on his/her publicly expressed intellectual opinions.[36]

It should not be forgotten, finally, that just freedom of investigation and the dissemination of ideas "should be adopted and protected, not only with regard to the rules of procedure with which the ecclesiastical authority complies at various levels of activity, for the purpose of performing its oversight duties in an appropriate manner, but also in the very universal system of the Church. The protection of this right demands, for example, that the fact that certain ideas are held and taught should not be considered cause for removal from the faculty as long as it is clear that the Magisterium of the Church rejects them."[37]

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34. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 103–104.
35. Cf. ibid., p. 104.
36. Cf. *PB* 2; CDF, Instr. *Donum veritatis*, May 24, 1990, no. 37
37. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 105; *SapChr*, arts. 26, 27 and 30; SCCC, *Ordinationes ed Constitutionem Apostolicam "Sapientia christiana" rite exsequendam*, April 29, 1979, art. 22, in *AAS* 71 (1979), pp. 505–506.

219 **Christifideles omnes iure gaudent ut a quacumque coactione sint immunes in statu vitae eligendo.**

All Christ's faithful have the right to immunity from any kind of coercion in choosing a state of life.

SOURCES: cc. 214, 542,1°, 971, 1087 §§ 1 et 2, 2352; IOANNES PP. XXIII, Enc. *Pacem in terris*, 11 apr. 1963 (*AAS* 55 [1963] 261); *GS* 26, 29, 52

CROSS REFERENCES: cc. 96, 98, 125, 199, 1° et 3°, 204 § 1, 207–210, 214–217, 221 § 1, 223–224, 290–293, 573 § 2, 574 § 1, 643 § 1, 4°, 653 § 1, 656, 4°, 657 § 1, 658, 688, 694–704, 711, 731 § 1, 1026, 1028, 1030, 1036, 1057 § 1, 1058, 1062 § 2, 1063, 1°–2°, 1089, 1097–1098, 1103, 1105 § 4, 1113–1114, 1492 § 1, 1643, 1644 § 1, 1674, 1708, 1712

COMMENTARY

Daniel Cenalmor

1. The freedom to choose a state of life, proclaimed by the Church throughout the ages, is a natural right, as the Encyclical *Pacem in terris*[1] has taught, and, as Vatican Council II has expressly recalled in no. 26 of *Gaudium et spes*, which places "the right to freely choose a state in life and to found a family" among the universal and inalienable rights of all people. But it is also a right inherent to the faithful, since, for the baptized, the objective in choosing one's own state is a condition of life of an ecclesial nature, related to the specific manner of living a Christian vocation,[2] and therefore, is related to one's own spirituality (c. 214). For this reason, it should not strike us as strange that the legislator, already in the *CIC*/1917 (cc. 214, 542,1°, 971, 1087, 2052), was concerned with effectively protecting this right.

2. The right to freely choose a state in life—understanding as such any of those permanent conditions of life which characterize the existence of the faithful in a stable and profound way, whether the laity or the

1. JOHN XXIII, Enc. *Pacem in terris*, April 11, 1963, in *AAS* 55 (1963), p. 261.
2. Cf. G. FELICIANI, *Il popolo di Dio* (Bologna 1991), p. 44; J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), pp. 133–137.

clergy, consecrated to God, married, or celibate[3]—in general entails the guarantee of immunity from coercion to grow in maturity and to decide one's own state in the Church; the right not to encounter unjust obstacles to the concrete implementation of that decision; and the right to preserve one's personal condition of life, without experiencing coercion to withdraw from it, unless crimes that provide this type of sanction have been committed.[4]

This right does not imply, on the other hand, the unconditional possibility of attaining the state each one desires for oneself.[5] Perhaps, for this reason, during the revision of the canon in the *LEF* draft, the expression *libere eligant*, present during the first *schemata*,[6] was abandoned, and in the end it stressed only immunity from coercion in choice, in order to avoid the conclusion that, based on an excessive interpretation of this norm, it could be assumed, for example, that the faithful would enjoy a strict right to receive holy orders.[7]

3. In fact, it is not appropriate in the Church to speak about a right of the baptized to be ordained and, therefore, to assume the condition of cleric, given that, apart from divine vocation and the canonical requirements imposed in the canon on the subject (cc. 1024–1052), the call from legitimate authority is required, who has the right and the duty to issue the necessary judgment of suitability regarding the aptitude of the faithful to fulfill this ministry (cc. 1025, 1029).[8] All of this should not serve as an impediment to the right to ask for the sacraments, to the extent that requisite personal conditions are satisfied, or to a just means from being used to implement that petition; or that there could even exist a certain duty to grant it, if the required conditions were fulfilled. Thus, as the *CIC* indicates, it is not only necessary that "for a person to be ordained, he must enjoy the requisite freedom," for which reason "it is absolutely wrong to compel anyone, in any way or for any reason whatsoever, to receive orders," but also that it is likewise prohibited "to turn away from orders anyone who is canonically suitable" (c. 1026).

Something similar could be said about the admission of the faithful to the religious state in an institute of consecrated life, or about their attaining this condition of life under any other manner that entails recognition on the part of the Church. Even though the freedom of the faithful to

3. Cf. J. HERVADA, *Elementos de...*, cit., pp. 133–137.
4. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 142; G. FELICIANI, *Il popolo...*, cit., p. 44.
5. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 142; M. KAISER, "Die rechtliche Grundstellung der Christgläubigen, in Handbuch des katholischen Kirchenrechts" (Regensburg 1983), p. 178; G. FELICIANI, *Il popolo...*, cit., p. 44.
6. Cf. CodCom, "Textus prior LEF," c. 22, and "Textus emendatus LEF," c. 22, in *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972), p. 505.
7. Cf. J. HERVADA, commentary on c. 219, in *Pamplona Com.*
8. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 141–142; J. HERVADA, *Elementos de...*, cit., p. 134.

follow that condition is to be acknowledged—this being a decision in which the right of association usually plays a role (c. 215)—such freedom does not imply that it should always be acted upon. Thus, the aspiration to join a given institute of consecrated life, or to establish a new one, could be opposed for a just and reasonable cause by a competent authority.[9]

Insofar as the freedom to contract marriage is concerned—a true condition of ecclesial life to which the faithful are entitled as all other human beings, not only to enjoy the *ius connubii*, but also because of the specific Christian vocation which it presupposes, rooted in a sacrament positively linked to the union of Christ with the Church, and which postulates, in and of itself, a right of freedom[10]—although the latter certainly belongs to all the faithful, unless they are impaired or have freely renounced it, it does not generate an unconditional *ius ad rem*. It may be sufficient to indicate that not everyone who so desires it and is free from impediments, prohibitions or *vetita*,[11] may contract marriage, since it is required that another person agree to that desire with the same freedom, and agree only to the mutual giving and accepting which arise from the matrimonial consent.[12]

4. In a strict sense, we cannot speak about a right of the faithful to assume the condition of a layperson, for the simple reason that the latter is inherent to the condition of the baptized, which is a paramount condition of baptism unless a different condition is assumed at a later time (that of a cleric or of consecrated life, according to c. 207 § 2). But there undoubtedly exists "a right to remain freely in the condition of layperson and to develop all the Christian possibilities, in and of that condition."[13]

In regard to Christian celibacy, which should not be confused with the natural state of celibacy and which could be defined as "that condition of life assumed by the faithful in following the doctrine of the Master with a specific *supernatural* purpose (*propter regnum coelorum*), whether of a predominantly ascetic nature or of a primarily apostolic order," whenever it appears within the context of Christ's message as *counsel*, and therefore without implying any social or juridical obligation to assume it—we will not discuss the moral issues—the possibility of adopting it also is a result of one's fundamental freedom. This freedom involves the right to assume that condition freely or not to be forced to assume it; the right not to encounter unjust obstacles in order to carry out the respective decision; and the right to remain in that way of life.[14]

9. Cf. G. FELICIANI, *Il popolo...*, cit., pp. 44–45.
10. Cf. J. HERVADA, *Elementos de...*, cit., p.136.
11. Cf. R. GARCÍA LÓPEZ, *Decisiones matrimoniales eclesiásticas. Efectos canónicos en los esposos y en los hijos* (Pamplona 1979), pp. 251–314.
12. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 142; G. FELICIANI, *Il popolo...*, cit., p. 44.
13. J. HERVADA, *Elementos de...*, cit., p.136.
14. Cf. ibid., p. 137.

This last freedom is a right of all the faithful, including lay people, since the condition of celibacy can be preached not only in regard to the consecrated life, which is only one way to live it, or of the secular clerics, for whom, with exceptions—some deacons, for example—in the Latin Church the bonds of celibacy are the condition of a cleric. In fact, even though the Christian celibate, apart from those two conditions, may have frequently associated forms of life similar to, or at least influenced by, consecrated life—despite the fact that until the third century, it was lived by Christian virgins and non-cleric ascetics—the link between this condition and the condition of the layperson or secular has currently become a fully lived reality again in the life of the Church (according to the description in *LG* 31).[15]

5. The duty of the faithful to freely choose their state corresponds, above all, to the duty, both of the Hierarchy, as well as of other members of the faithful, not to coerce anyone to embrace a given condition of life. That right, as well as its correlative duty, finds a concrete development in some canons in the Code. Because of its general nature, c. 125, which intends to protect the freedom to perform any juridical act, should be mentioned. In the two paragraphs of this canon, a juridical act "performed as a result of force imposed from outside on a person who was quite unable to resist it" and which should be considered as not having taken place (§ 1) is distinguished from an act "performed as a result of fear, which is grave and unjustly inflicted, or as a result of deceit," which is valid, unless the law provides otherwise. However, it can be rescinded by a court judgment, "either at the instance of the injured party or that party's successors in law, or ex officio" (§ 2). For the case of those canonical states related to the reception of a sacrament (marriage and sacred orders), that court decision cannot be disconnected from the judgment about the validity of the sacrament itself.

In all other respects, in regard to the freedom to enter into a specific condition of life, the relevant specific norms contained in the *CIC* must also be borne in mind, such as c. 1026 and c. 1036, already cited, in reference to the freedom with which the sacrament of orders is to be received; cc. 643 § 1,4°, and 656,4°, in which it is indicated that admission into the novitiate or the religious profession is invalid if the candidate has been unduly swayed through violence, grave fear or deceit; or the various canons protecting the freedom to enter into marriage, by declaring its nullity when the consent of the parties be absent, or when it is invalidated due to error, fraud, or force (cc. 1057 § 1, 1089, 1097, 1098, 1103).

15. Cf. ibid.

But this right of freedom of the faithful, insofar as it is an informing principle, also demands more positive attitudes from the entire Christian community, such as, for instance, education in chastity, remote preparation for marriage, various forms of assistance that could be rendered to follow one's own vocation, or even the vocational approaches which allow the faithful to know and embrace freely a specific condition of life.

220 **Nemini licet bonam famam, qua quis gaudet, illegitime laedere, nec ius cuiusque personae ad propriam intimitatem tuendam violare.**

No one may unlawfully harm the good reputation which a person enjoys, or violate the right of every person to protect his or her privacy.

SOURCES: c. 2355; *GS* 26, 27; IOANNES PP. XXIII, Enc. *Pacem in terris*, 11 apr. 1963 (*AAS* 55 [1963] 260)

CROSS REFERENCES: cc. 96, 98, 128, 199, 1° et 3°, 204 § 1, 208–210, 212 § 3, 214, 218, 221, 223–224, 240, 483 § 2, 630 §§ 4–5, 642, 719 §§ 3–4, 976, 979, 982–985, 991, 1048, 1080, 1082, 1130–1133, 1341–1342, 1352 § 2, 1361 § 3, 1388, 1390, 1455, 1457, 1546 § 1, 1548 § 2, 1550 § 2, 2°, 1564, 1598 § 1, 1703 § 1, 1717, 1719

COMMENTARY

Daniel Cenalmor

The duty to respect a good reputation and the duty to respect the right of each person to protect his/her own privacy—just as their correlative rights—certainly concern all human beings, since they do not originate in baptism, but rather in natural law.[1] In fact, as the pontifical Magisterium teaches, natural law requires "that due honor be given to all people and that their good name be respected."[2] Vatican Council II, when it pointed out that awareness of the fundamental dignity belonging to human beings is increasing during the present time, has invoked, in turn, the right "to a good reputation, to respect" and "to the protection of private life," among the universal and inviolable duties and rights needed to lead a truly human life (*GS* 26 b).

1. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos* (Pamplona 1987), pp. 152–158; P.-J. VILADRICH, "La declaración de derechos y deberes de los fieles," in REDACCIÓN IUS CANONICUM, *El proyecto de la Ley Fundamental de la Iglesia* (Pamplona 1971), p. 152; J.H. PROVOST, commentary on c. 220, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 153; J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), p. 148; idem, commentary on c. 220, in *Pamplona Com*; G. FELICIANI, *Il popolo di Dio* (Bologna 1991), pp. 45–46.

2. JOHN XXIII, Enc. *Pacem in terris*, April 11, 1963, in *AAS* 55 (1963), p. 260; Cf. PIUS XII, *Allocution*, June 2, 1940, in *AAS* 32 (1940), pp. 273ff; idem, *Allocution*, December 6, 1953, in *AAS* 45 (1953), p. 975.

It might seem strange, therefore, to include the present norm, originally of a natural order, among the provisions pertaining to the obligations and rights of the faithful. However, there are various reasons justifying this decision of the legislator.

In the first place, it should be borne in mind that human rights and duties and the rights and duties of the faithful, while they reflect two different levels of concern, are not in opposition to each other, but are complementary. "Human rights are born from the nature of the human being, while the fundamental rights of the faithful trace their origin to conformation in Christ through baptism (of a supernatural order), though in some cases, they find support in a fact of nature, such as happens with the right of association."[3] The former refers primarily to the condition of all human beings within civil society, while the latter refers to the position of the faithful within the Church.[4] But, just as grace does not exist in opposition to nature, but rather perfects and elevates it, the incorporation of a person into the people of God through baptism, without adversely affecting one's patrimony of human rights and duties, lifts one up and guides one towards a supernatural end.

What we have just indicated does not imply that the Church should explicitly adopt natural rights and duties in its code of laws, since this instead falls under the purview of civil laws. However, due to the relevance of some of these rights and duties in regard to the life of the people of God, either in general or under specific historical circumstances, it is for canon law to also remember them at times, as one more means to achieve the proper exercise and effective protection of such rights within the midst of the ecclesial community.[5] This is the case of the duties contained in the present prescription.

1. *Respect for good reputation*

a) A *reputation* or the public opinion that is held of someone is, according to St. Thomas, the most precious temporal asset that a person possesses, the unlawful injury of which can be considered more serious than theft itself, since it is greater than material wealth, being closer to spiritual riches.[6] This alone would be enough to explain the particular interest of the Church in defending the natural law reflected in it. But this interest is even more understandable if we keep in mind that there also exists a good ecclesial reputation of the baptized, which refers to their

3. J. HERVADA, *Elementos de...*, cit., p. 147.
4. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 158.
5. Cf. ibid., pp. 153–158; P.-J. VILADRICH, "La declaración de derechos y deberes...," cit., p. 152; G. FELICIANI, *Il popolo...*, cit., pp. 45–46.
6. Cf. *S. Th.*, II–II, q. 73, a. 2 c and a. 3 c.

human qualities and, above all, to their Christian virtues, to their integrity of faith and to their permanence in communion; and that this good reputation can be unjustly and gravely injured as a result of the spread of unfounded accusations pertaining to behaviors assumed to be contrary to doctrine and to morals, as history clearly shows us. Insofar as the respect of one's good reputation is concerned, even though it is protected for all people by natural law, it assumes specific reflections and connotations within the ecclesiastical community, which the Code of canon law should also protect.[7]

b) The duty of the faithful to respect the good reputation of others has been formalized, according to the general practice adopted throughout this entire chapter, based on the *LEF* draft, which in turn was inspired in the Encyclical *Pacem in terris*,[8] in *Gaudium et spes* 26 and in *Unitatis redintegratio* 12.[9]

The first *schemata* of the canon directly adopted the right to a good reputation.[10] But, as of the 1976 text of the *LEF*, it was decided, instead, to formalize the corresponding duty,[11] perhaps because of the advantages that this entailed: on one hand, to render unnecessary the problem of citing only the baptized as the subject of that right, when it belongs, in reality, to any person; to urge the faithful—whom the canon addresses—to fulfill their natural duty to respect the good reputation of others, while in passing, to implicitly exhort them to attain the mutual esteem which is to shine among Christians (*UR* 12 a); and, finally, to observe in this way the traditional ecclesial practice of insisting more on the performance of duties towards others than on the respect given to one's own rights (see commentary on c. 209 § 2).

c) When pointing out that "it is not lawful for anyone to illegitimately harm the good name which someone else enjoys," this provision indicated two things: that everyone—the Hierarchy, the other members of the faithful, and, in the last analysis, any human being—should respect the good reputation of all in general, and that harm can be done to this good only when there may be *legitimate* reasons for doing so.[12]

In fact, except the case of the sacramental seal—which "is sacred and cannot be violated under any pretext" (CCC, 2490; c. 983 § 1)—divine law at times gives authorization to uncover defects, sins or crimes whenever a higher good belonging to all people, to civil society or to the Church

7. Cf. G. FELICIANI, *Il popolo...*, cit., pp. 45–46.
8. See note 2.
9. Cf. CodCom, "Textus prior LEF, c. 22" and "Textus emendatus LEF, c. 22," in *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972), pp. 506–507.
10. Cf. ibid.
11. Cf. *Comm* 12 (1980), p. 41.
12. Cf. H.J.F. REINHARDT, commentary on cc. 209–223, in *Münsterischer Kommentar zum Codex Iuris Canonici*, (Essen 1987), p. 220/1.

is involved. Ecclesiastical law similarly contemplates concrete situations, such as those which institute a procedural action—if such a right exists in the case in question—the publicizing of which might perhaps diminish the good reputation of the defendant.[13] But, on all other occasions, in which neither ecclesiastical law nor divine law can serve to legitimate it, it is unlawful to act to the detriment of the good reputation of someone.

d) Stating this duty, however, would be of little use if suitable means of guaranteeing its effective enforcement, and thereby protecting the correlative rights of others to a good reputation, were not also offered. This right implies, among other things: the possibility of having recourse to the ecclesiastical authority whenever a good reputation is considered to be injured through calumny, slander, insults, the spreading of rumors, etc.; the prohibition against accepting anonymous accusations; and the right of the accused to learn the name of the accuser and the subject of the accusation, etc.[14]

In this sense, it is fairly instructive that prior legislation, despite having already anticipated, in part, a system of actions directed at achieving protection of the right to a good reputation, not infrequently has proved itself, as a result of the lacunae from which it suffered, to be only slightly effective at ensuring the good reputation of people and even of entire institutions in the Church, which has seen this fundamental right violated without the possibility of an appropriate defense.[15] Thus, we can infer from this the importance of various norms contained in the *CIC* seeking to better safeguard this right in the Church.

e) Whoever brings a calumnious denunciation of some delict to the attention of an ecclesiastical Superior, or in any other way damages the good reputation of someone else—apart from the case of false denunciation of solicitation in confession, wich is punished as an offense from time immemorial (c. 1390 § 1)—can be punished with a just penalty, not excluding a censure (390 § 2), and can be compelled, in addition, to make amends for the harm caused (cc. 1390 § 3 and 128). This action does not require a prior denunciation or complaint from the injured party before implementing the applicable procedural action, as was required in the *CIC*/1917 (cc. 1938 and 2355), even though the judge can only proceed at the request of one of the parties (cc. 1452 § 1), while in a case involving the promoter of justice, upon a prior decision of the Ordinary, as with any canonical penal action (cc. 1721). The Ordinary, before following this procedure, or by the administrative procedure—if there were just causes and the imposition of a censure were not discussed (c. 1342)—would first seek to exhaust all other pastoral remedies which are at his disposal, in

13. Cf. J. HERVADA, *Elementos de...*, cit., p. 148.
14. Cf. ibid.; J. HERVADA, commentary on c. 220, in *Pamplona Com.*
15. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 153–155.

order to restore justice and to bring about reformation of the slanderer (c. 1341).

One of the innovations in the *CIC*, which is noteworthy in regard to the most effective protection of the right to a good reputation, is the disappearance of the *ex informata conscientia* suspension—foreseen in cc. 2186–2194 in the *CIC*/1917—and of all other special procedures in which the right of defense was not sufficiently safeguarded. This right now remains guaranteed in all judicial proceedings (c. 1598 § 1), even during administrative proceedings (c. 1342 § 3), despite the fact that the *CIC* does not expressly indicate, for example, the right of the accused party to learn the name of his accuser, or the right to always know the motivation underlying the acts of the ecclesiastical authority who intends to impose sanctions.[16]

In all other respects, there are numerous prescriptions in the canons adopted throughout the *CIC*—the majority of which also appear in the *CIC*/1917—which are intended to protect the good name of the faithful in other ways and which reflect a concrete manifestation of the right to it and of its correlative duty (for example, cc. 1048, 1361 § 3, 1455, 1548 § 2,2° and 1717).[17] Even the duty to respect the right of each person to protect his own privacy, which appears in this same norm, could be considered one more way of defending one's good reputation in the Church.

2. *Respect for privacy*

a) As we indicated at the beginning of this commentary, protection of one's own privacy is also a natural right of human beings that all people should respect. The relationship existing in practice between people's privacy and their reputation, and the originally natural character of the right to both, might perhaps be the cause for the shared treatment they receive in this canon.

The duty to respect the right of each person to protect his or her own privacy was introduced at a later stage in c. 220, since none of the *schemata* of the *LEF* considered it, nor did it even appear in the 1982 *schema* of the CIC. It would seem that the origin of this prescription is in c. 33 of the *schema* "De Populo Dei" of the year 1977, which pointed out "Christifideles officium et ius habent servandi secretum commercii epistolaris aliusve personalis indolis." This canon, despite having been rejected by

16. Cf. ibid., p. 156.
17. Cf. H.J.F. REINHARDT, commentary on cc. 209–223..., cit., pp. 220/1–220/2.

the Code Commission in 1979, would wind up later expressing itself in this norm in a more general way.[18]

b) As a result of the discussion which preceded incorporation of this prescription in the *CIC*, *intimitas* in a strict sense is the psychological and moral privacy of individuals; it is that which belongs to the specifically personal sphere of the internal forum or conscience.[19] But the right to one's own privacy also extends, within the Church, to everything that does not fall under the scope of the public nor commonly known, that is, to all that pertains to the purely private sphere of persons and institutions.[20]

This right, insofar as it includes in its object not only the private sphere which is at the disposal of all people, but also the specific right of the faithful to live their relationship with Christ without enduring abusive hindarance on the part of other members of the baptized and even from the same ecclesiastical authority, assumes within the Christian community—such as the right to a good reputation—inherent reflections and connotations which should also find adequate protection.[21]

c) As with the right to a good reputation (see above 1, c), the same thing can be said about the limits of respect for privacy: only when there are *legitimate* reasons, accepted by divine law or by ecclesiastical law, can inquiries be made into the standard of the private life of others. But it should not be forgotten that the right to defend the forum of one's conscience is absolutely inviolable: no one can force another to let one's personal privacy be analyzed; one must first have explicit, informed and absolutely free permission.[22]

d) Due to the right to privacy, there is no obligation to provide information to which the recipient does not have a strict right.[23] This right likewise protects the secrecy of personal correspondence.

The primary field of application in the Church of the duty to respect the privacy of people is that which refers to the sphere of conscience: the obligations of the confessor and of the other members of the faithful related to the sacrament of penitence (cc. 970, 983–984, 1388 and 1550 § 2,2°), freedom of the other faithful to seek out the confessor of their choice (cc. 240 § 1, 976 and 991), and other provisions in regard to

18. Cf. E. CORECCO, "Il catalogo dei doveri—diritti del fedele nel CIC," in *I diritti fondamentali della persona umana e la libertà religiosa. Atti del V Colloquio Giuridico (8–March 10, 1984)* (Rome 1985), p. 107; J.H. PROVOST, commentary on c. 220, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 153.
19. Cf. V. MARCOZZI, "Il diritto alla propria intimità nel nuovo Codice," in *La Civiltà Cattolica* 134 (1983), IV, p. 574.
20. Cf. J. HERVADA, *Elementos de...*, cit., p. 148.
21. Cf. G. FELICIANI, *Il popolo...*, cit., p. 46.
22. Cf. V. MARCOZZI, "Il diritto alla propria intimità...," cit., p. 579.
23. Cf. J. HERVADA, *Elementos de...*, cit., p. 148.

confession or spiritual guidance in general (for example, cc. 240 § 2 and 985).

But the right to privacy is also a source of inspiration for other prescriptions in the *CIC*, such as that of c. 1548 § 2 concerning witnesses, specifically releasing from the obligation to respond in judicial proceedings, (i) clerics with respect to matters which have been confided to them by reason of their sacred ministry, as well as other professionals who are bound to keep the secrecy of their office, and (ii) "those who fear that, as a result of giving testimony, a loss of reputation, dangerous harassment or some other grave evil will ensue for themselves, their spouses, or those related to them by consanguinity or affinity." (The relationship between the right to privacy and the right to a good reputation can also be seen here.) Another example is found in c. 642, which states that the employment by a religious superior of an expert, in order to establish the satisfactory health, character and maturity of a candidate for the novitiate, shall be subject to the provisions of c. 220.

Certain practices, for instance, involving "the review of life" or excesses which could be committed in the exercise of an indiscrete and poorly understood "spiritual guidance" would constitute a abuse of this right.[24]

24. Cf. G. FELICIANI, *Il popolo*... cit., p. 46.

221 **§ 1. Christifidelibus competit ut iura, quibus in Ecclesia gaudent, legitime vindicent atque defendant in foro competenti ecclesiastico ad normam iuris.**

§ 2. Christifidelibus ius quoque est ut, si ad iudicium ab auctoritate competenti vocentur, iudicentur servatis iuris praescriptis, cum aequitate applicandis.

§ 3. Christifidelibus ius est, ne poenis canonicis nisi ad normam legis plectantur.

§ 1. Christ's faithful may lawfully vindicate and defend the rights they enjoy in the Church before the competent ecclesiastical forum in accordance with the law.

§ 2. If any members of Christ's faithful are summoned to trial by the competent authority, they have the right to be judged according to the provisions of law, to be applied with equity.

§ 3. Christ's faithful have the right that no canonical penalties be inflicted upon them except in accordance with the law.

SOURCES: § 1: c. 1646
§ 2: c. 2214 § 2
§ 3: cc. 2195, 2222

CROSS REFERENCES: cc. 18–19, 36 § 1, 50, 87, 96, 98, 135 § 3, 199, 1° et 3°, 204 § 1, 208–220, 223–224, 695, 696 § 1, 697–698, 699 § 1, 700, 702 § 2, 729, 1030, 1311, 1315–1318, 1321, 1341–1350, 1364–1402, 1417 § 1, 1445 § 3, 1°, 1446, 1452, 1457, 1461, 1476, 1478, 1481–1482, 1490–1493, 1494 § 1, 1504–1506, 1620, 7°, 1622, 2° et 6°, 1626 § 1, 1628, 1638, 1645, 1647 § 1, 1649 § 1, 3°, 1654 § 2, 1674, 1676, 1687 § 2, 1695, 1699 § 3, 1702, 1703 § 1, 1708, 1720, 1°, 1723, 1725, 1727 § 1, 1721, 1733, 1737 § 1, 1738

COMMENTARY

Daniel Cenalmor

The three paragraphs of this canon—the content of which are related to the sixth and seventh guiding principles used for revision of the *CIC*, as they pertain to the "safeguarding of people's rights" and to the "procedure for safeguarding subjective rights," respectively—fulfill a dou-

ble mission. They state the various rights of the faithful in regard to administration of justice in the Church, and they adopt a series of juridical guarantees for protecting the remaining subjective rights, in order to avoid, among other things, possible abuses which originate in the arbitrary conduct of authority. All of them were conceived in the *LEF* draft, which, in its first stage only included the prescriptions contained in §§ 1 and 2,[1] but to which that contained in § 3[2] would later be added as an independent canon. Then, when the promulgation of the *LEF* was suspended, and its chapter on the fundamental obligations and rights of the faithful was transferred entirely to the *CIC*, these three prescriptions were grouped in the same canon, and this is the way they have been promulgated, also in the *CCEO*, c. 24.

The need to juridically safeguard the rights of the faithful is intrinsically linked to the concept itself of *ius*. Because any true right involves the obligation to grant its holder in virtue of what belongs to him/her, and for the public authority, this obligation translates not only into the duty to respect the rights of each person, without abuse of power, but also to ensure, to the extent possible, the regulation of timely mechanisms needed for their just protection, which forms part of the common good (*DH* 7 c). The "principle of protection of the person's juridical heritage" can be easily inferred from this premise, and, consequently, the right of the faithful to defend their rights legitimately in the Church (§ 1) and the right to be judged *servatis iuris praescriptis* (§ 2), which are, in addition, subsequent to the human right to juridical safety,[3] and, for all these reasons, absolutely necessary.[4] On the other hand, the right of the faithful not to be punished with canonical penalties except in accordance with legal norms (§ 3), even though it is also grounded in the aforesaid *ius nativum* and may be of undeniable importance, does not seem to be necessarily required, in and of itself, by natural law[5] (see below 3, a).

Considering what we have just indicated, it can be understood that the rights enunciated in this canon belong not only to the *christifideles*, but also to all other people as well, to the extent that they may be affected by the canonical system and that they may need to defend their rights in the Church;[6] thus, in the *CIC*, for example, any person, "whether he is baptized or not," is recognized as possessing the capacity to petition a court (c. 1476). Its explicit attribution to the faithful—which can be explained

1. Cf. CodCom, "Textus prior LEF, c. 21," in *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972), p. 506.
2. Cf. idem, *Textus emendatus LEF*, c. 21, in ibid.
3. Cf. PIUS XII, *Radio-mensaje de Navidad*, December 24, 1942, in *AAS* 35 (1943), pp. 21–22; P.-J. VILADRICH, "La declaración de derechos y debseres de los fieles," in *Redacción Ius Canonicum, El proyecto de Ley Fundamental de la Iglesia* (Pamplona 1971), pp. 151–152.
4. Cf. CodCom, "Relatio I," pp. 84–85, in *Legge e Vangelo*..., cit., pp. 582–583.
5. Cf. G. FELICIANI, *Il popolo di Dio* (Bologna 1991), p. 51.
6. Cf. P.-J. VILADRICH, "La declaración de derechos y deberes...," cit., p. 152.

because they are its most usual subjects and those to whom this chapter of the *CIC* addresses itself in particular—should be understood, primarily for this reason, as a way to stress the radical equality of all members of the people of God in regard to these rights.

1. *The right to lawful defense of one's own rights* (§ 1)

a) Consistent with the sixth guiding principle for the revision of the *CIC*—in which it was pointed out that the rights of each member of the faithful should be recognized and safeguarded, "et quae in lege naturali vel divina positiva continentur, et quae ex illis congruenter derivantur ob insitam socialem conditionem quam in Ecclesia acquirunt et possident,"[7] § 1 of this canon adopts the right of the faithful to invoke and legitimately defend "the rights they have in the Church," in other words, those set forth in cc. 208–220, as well as the others, as recognized by the *CIC*: by other general ecclesiastical law, by particular laws, or by any other sources of law (for example, contracts).[8]

b) The defense of any of these rights on the part of the baptized can be achieved through two means, clearly indicated in the text of the canon: in the first place, by claiming them legitimately before the ecclesiastical authority or before the other members of the faithful ("legitime vindicent"), which includes, in turn, various modalities, such as stressing their possession, encouraging their exercise, or lawfully asserting or recovering them; and, in the second place, through the corresponding recourse to the competent ecclesiastical forum—whether administrative or judicial—*ad norman iuris*.[9]

Even though the faithful may also resort to this latter avenue to claim one's rights in the Church, the *CIC*—in following evangelical teaching (Mt 18:15–16) and canonical tradition[10]—urges the faithful and, above all, the bishops, to avoid lawsuits among the people of God by settling conflicts peacefully and as promptly as possible without detriment to justice (c. 1446). Once a lawsuit has been instituted, this Christian obligation weighs particularly upon the judge, who, at the beginning of the *lis*, and at any time during the proceedings, prior to judgment "is not to fail to exhort and assist the parties to seek an equitable solution to their controversy in discussions with one another. He is to indicate to them suitable means to this end and avail himself of serious-minded persons to mediate" (c. 1446 § 2; cf. c. 1676). When the lawsuit is about a private good of the

7. *Comm* 1 (1969), p. 82.
8. Cf. H.J.F. REINHARDT, commentary on cc. 209–223, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1987), p. 221/1.
9. Cf. ibid.
10. Cf. L. DEL AMO-J. CALVO, commentary on c. 1446, in *Pamplona Com.*

parties—in which the defense of a right, therefore, would not affect the public good—the judge shall consider "whether an agreement or a judgment by an arbitrator, in accordance with the norms of cc. 1713–1716, might usefully serve to resolve the controversy" (c. 1446 § 3).

Similar solutions are indicated by the *CIC* in regard to conflicts over singular administrative acts (cc. 1732 and 1733 § 1), for which the creation of a department of council is provided in order to seek out and suggest equitable solutions within the scope of their jurisdiction, either through the Bishops' Conferences, or subsidiarily through the bishops (cc. 1733 §§ 2 and 3).

However, the use of all these means, and, in general, the preference for avoiding juridical disputes and for diligently searching for an amiable settlement without adversely affecting justice, should not diminish the right of the faithful to defend their rights "in foro competenti ecclesiastico ad normam iuris."

c) In fact, the defense of subjective rights through the procedural path is always to remain guaranteed if we wish to respect this norm. The *schemata* of this canon even managed to indicate explicitly—until the last version of the *LEF* (from 1980), at which these words were eliminated—the two fora that could have competence over the resolution of these conflicts: the administrative, for those cases defined by law, or the judicial.[11]

At first glance, the *CIC* may seem to direct the majority of disputes over rights towards the judicial channels, since c. 1400 § 1, 1° points out the first object of a trial is "to pursue or vindicate the rights of physical or juridical persons." In c. 1342 §§ 1 and 2, the judicial channel is clearly preferred for imposing or declaring penalties, which are an example of the restriction of rights. In c. 1491, it is indicated that each right is protected by an action "unless otherwise expressly provided."[12]

But the exception to this last norm adopted in c. 1400 § 2 ("Disputes arising from an act of administrative power, however, can be referred only to the Superior or to an administrative tribunal"), even though it should be interpreted strictly (c. 18) and should not affect all the acts of administration (c. 1413,1°), but rather, only those which presuppose an exercise of executive power (inherent, vicarious or delegated);[13] in practice, it refers a good number of possible cases regarding the defense of rights exclusively to administrative channels.

d) For the universal Church, the Signatura is endowed with functions which allow it to act as an administrative tribunal (*PB* 123; c. 1445 § 2). The problem is that, outside of this case—and, therefore,

11. Cf. CodCom, "Textus prior LEF, c. 21...," cit., p. 506; *Comm* 12 (1980), p. 42.
12. Cf. J.H. PROVOST, commentary on c. 221, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 154.
13. Cf. ibid.

within the scope of the particular churches—there do not exist norms over these tribunals, except those in which their activity is mentioned in generic terms (cc. 149 § 2, 1400 § 2), since those that were written during the revision of the *CIC* were not considered opportune, and were suppressed from the text at the last minute.[14] For this reason, before actions of the local ecclesiastical executive authority (singular decrees, for example), in which the faithful could consider one's rights to have been violated, it is only appropriate to seek hierarchical recourse (cc. 1734–1739); or to the Signatura if an appeal is made to the Holy See, which is understood to be expensive and awkward.[15]

The creation of administrative tribunals at various ecclesial levels raises without a doubt theological and canonical problems that should be considered (at least those involving safeguarding the unitary character of power in the Church and the autonomy of the particular churches in regard to non-primatial powers). But c. 221 § 1, insofar as it is an informing principle, acts as a stimulus to find suitable juridical means which will allow the faithful to be able to defend their own rights legitimately and effectively in all cases.

e) The right to a legitimate defense of one's own rights would cease to be such if, by exercising it, the obligation of communion were not respected (c. 209 § 1), or other just limitations imposed on any right by the Church (c. 223). The legitimization of defense—as the canon indicates—is also a necessary condition for properly exercising this right. From this, it is required within the scope of procedures that a petition have a basis, and if such a basis does not emerge with certainty, *prima facie* at least as a *fumus boni iuris* (c. 1505 § 2,4°), the lawsuit containing the petition is to be immediately rejected, because "it loudly proclaims, based on its own indigence, the lack of justice of the petition which has been formulated."[16]

Finally, it should be borne in mind that this right entails a series of derived rights: the right to be assisted by an advocate (cc. 1481 and 1482), the guarantee of initiating a procedure (cc. 1504 and 1505), the right to have economic obstacles (for example, by means of effectively instituting free assistance when needed) and those of other kinds removed, etc.[17]

14. Cf. E. LABANDEIRA, *Tratado de Derecho Administrativo Canónico* (Pamplona 1988), pp. 710–711.

15. Cf. J.H. PROVOST, commentary on c. 221..., cit., p. 155.

16. Cf. C. DE DIEGO-LORA, "El derecho fundamental de los fieles a una justicia técnica letrada en la Iglesia," in *Fidelium Iura* 3 (1993), p. 270.

17. Cf. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), p. 148.

2. *The right to be judged according to the juridical norms* (§ 2)

a) After proclaiming the right of the faithful to legitimately assert the rights they enjoy in the Church, c. 221 § 2 affirms the reciprocal right of those members of the faithful to whom the claim is addressed, to be judged according to canonical norms, which are to be applied with equity.

In accordance with the text of the canon, this right—which, just like the preceding one, is grounded in the principle of the protection of the juridical heritage of the person and in the human right to juridical safeguards—entails the strict duty that the judicial process unfolded according to previously established juridical norms (procedural and substantive), which are to be interpreted so as to ensure the effective safeguarding of the rights of the members of the Church, to the extent possible and, at the same time, with equity.[18]

b) Equity, or the softening of the rigor of law through charity, so that the ideal of justice may be more fully achieved and the inevitable insufficiencies of laws (c. 19) be compensated for, is an essential principle in the canonical system, and in general, in Catholic thought. Related to *epieikeia* in Aristotelian ethics (correction of the generic law in a specific case), canonical equity is rooted in the biblical interpretation of law, in which the demands of justice are inseparable from mercy.[19]

Even though equity is a duty of the judge, properly speaking, more than a right of what may be just—since *ius* refers to justice[20]—its explicit reference in this canon can be understood as a way of urging its application in all those cases in which people's rights are involved.

c) The contents of this prescription—and of its expression "ad iudicium vocentur"—even in reference to any kind of judicial process, has particular application for the penal processes (cc. 1717–1731), where not only should procedural norms be fulfilled to the fullest extent possible, but also those that are specifically penal (c. 221 § 3) and those in which canonical equity is to be present, above all at the time of imposing a penalty (cc. 1344–1350).[21]

Insofar as administrative procedures are concerned, we believe that this fundamental norm can also be applied to them, *mutatis mutandis*; since, while they are not trials, they are equally "formal procedures of contradiction, established by law to protect certain rights or interests, whether general or particular"[22]; and within them, it is also appropriate to

18. Cf. CodCom, "Relatio super priore schemate LEF," p. 85, in *Legge e Vangelo...*, cit., p. 583.
19. Cf. H.J.F. REINHARDT, commentary on cc. 209–223..., cit., pp. 221/2 and 221/3.
20. Cf. J. HERVADA, commentary on c. 221, in *Pamplona Com.*
21. Cf. *CIC*/1917, c. 2214 §2; H.J.F. REINHARDT, commentary on cc. 209–223..., cit., pp. 221/2 and 221/3.
22. Cf. E. LABANDEIRA, "Introducción a la Parte V del Libro VII," in *Pamplona Com*, p. 179.

recognize that the faithful have the right to have procedural and substantive norms observed, and, similarly, to recall the duty that said norms be applied with equity.

d) Finally, by heeding the principle on which it is based, the fundamental right to be judged according to law demands, as an informing principle, that the prescriptions of law be sufficient so as to exclude all arbitrariness,[23] since otherwise, justice would not be truly served. Thus, this prescription, despite its generic language, could be considered a norm of a programmatic character, intended to guide any future development of ecclesiastical legislation.[24]

3. *Legality in penal matters* (§ 3)

a) The penalties legitimately imposed by the ecclesiastical authority, by virtue of the innate and original power which exists in the Church to constrain its members who commit offenses (c. 1311) through the use of penal sanctions, are one of the clearest cases in which the free exercise of rights can be limited (c. 96), for which reason juridical protection of the faithful is particularly important in the face of possible abuses in this area. Canon 221 § 3 provides for this, when it indicates that "the faithful have the right that no canonical penalties be inflicted upon them except in accordance with the norms of law."[25]

This prescription, included the *LEF* project in 1970, which undoubtedly responds—as do all others in this canon—to the human right to juridical safeguards and even to the principle of protection of personal juridical patrimony, is inspired by the principle of legality in criminal matters ("*nullum crimen, nulla poena sine lege*"), used in the majority of developed nations to avoid the arbitrary use of coercive power on the part of authority.[26] But the right recognized in this principle—which, while it tends to bring about justice within this sphere, does not cease to be a principle of social and juridical organization of human law[27]—does not seem, in terms of its language, to be demanded by natural law, because natural law certainly requires the authority to punish only when there are legitimate reasons which are proportinate. But this does not mean that it obligates the latter to legislate the use of its punitive power completely, much less to formalize exhaustively all the concrete manifestations of offenses

23. Cf. H.J.F. REINHARDT, commentary on cc. 209–223..., cit., p. 221/2.
24. Cf. G. FELICIANI, *Il popolo...*, cit., pp. 49–50; C. MIRABELLI, "La protezione giuridica dei diritti fondamentali," in *Les droits fondamentaux du chrétien dans l'Eglise et dans la société. Actes du IV Congrès International de Droit Canonique. Fribourg (Switzerland) 6–October 11, 1980* (Milan 1981), p. 417.
25. Cf. G. FELICIANI, *Il popolo...*, cit., p. 50.
26. Cf. CodCom, "Relatio II," p. 135, in *Legge e Vangelo...*, cit., p. 633.
27. Cf. J. HERVADA, commentary on c. 221..., cit.; G. FELICIANI, *Il popolo...*, cit., p. 51.

and the applicable penalties attached to them, as established by the principle "*nullum crimen, nulla poena sine lege*," which is proper to governments.

b) Within the context of the *CIC*, the formula used by c. 221 § 3 implies a compromise solution between those recommending full integration into canon law of the principle of legality in penal matters, and those who judge it to be incompatible with the law of the Church, or at least, inappropriate,[28] since attempts have been made not to leave excessive room to the discretionary nature of the ecclesiastical Superior, who can only inflict penalties on the faithful in accordance with legal norm, but without assuming that this provides for all types of delicts and their applicable penalties.

In fact, by taking into account that the salvation of souls—which is supreme law of the Church (c. 1752)—can demand on occasion the punishment of behaviors which are seriously harmful to ecclesial order, even though they may not have been classified as offenses in the *CIC* (cc. 1364–1398), in other laws (cc. 1315–1318) or precepts (c. 1319). Canon 1399, consistent with what was established in c. 2222 § 2 of the *CIC*/1917, has introduced an exception to the principle of legality in penal matters,[29] since by virtue of that canon, apart from cases indicated in the *CIC* or in other laws, other external infractions of divine or canon law can also be punished "only when the special gravity of the violation requires it and necessity demands that scandals be prevented or repaired," provided that those offenses, of course, be gravely imputable by reason of malice or of culpability (c. 1321 § 1).

In this way, the *CIC* has left a certain margin of discretion in the use of coercive power on the part of authority, which, in all other respects, before instituting a judicial or administrative procedure to impose or declare penalties—thereby limiting the rights of the faithful—is to have recourse to fraternal correction, reproof or other methods of pastoral care, in order to try to repair the scandal, restore justice and achieve reformation of the offender (c. 1341).

28. Cf. G. FELICIANI, *Il popolo...*, cit., p. 51.
29. Cf. ibid.

222 **§ 1. Christifideles obligatione tenentur necessitatibus subveniendi Ecclesiae, ut eidem praesto sint quae ad cultum divinum, ad opera apostolatus et caritatis atque ad honestam ministrorum sustentationem necessaria sunt.**

§ 2. Obligatione quoque tenentur iustitiam socialem promovendi necnon, praecepti Domini memores, ex propriis reditibus pauperibus subveniendi.

§ 1. Christ's faithful have the obligation to provide for the needs of the Church, so that the Church has available to it those things which are necessary for divine worship, for works of the apostolate and of charity and for the worthy support of its ministers.

§ 2. They are also obliged to promote social justice and, mindful of the Lord's precept, to help the poor from their own resources.

SOURCES: § 1: c. 1496; *AA* 21; *AG* 36; *PO* 20, 21; PAULUS PP. VI, Exhort. Ap. *Nobis in animo*, 25 mar. 1974 (*AAS* 66 [1974] 185)
§ 2: *AA* 8; *DH* 1, 6, 14; *GS* 26, 29, 42, 65, 68, 69, 72, 75, 88

CROSS REFERENCES: cc. 96, 204 § 1, 208–213, 215–217, 224, 225 § 2, 231 § 2, 269, 1°, 281, 282 § 2, 287, 295 § 2, 298 § 1, 384, 402 § 2, 510 § 4, 528 § 1, 529 § 1, 531, 538 § 3, 551, 640, 672, 707 § 2, 747 § 2, 768 § 2, 791, 848, 946, 1181, 1254, 1258–1267, 1271, 1274, 1285–1286, 1299–1302, 1350, 1385

COMMENTARY

Daniel Cenalmor

The duty to assist the Church with its needs (5th commandment of the Church, cf. CCC, 2043), and the duty to promote social justice and to aid the poor, have been grouped together in this canon through both paragraphs, probably because of the relationship existing between their objects, which contemplate assistance of a primarily "temporal" nature.

The first of these prescriptions was conceived—as nearly all prescriptions in this title—in the *LEF* draft and takes up an authentic duty of the faithful, but not the second one, which originates in the 1977 "De Populo Dei" *schema* (see commentary on c. 209), and which recalls two natu-

ral obligations of all people, whose fulfillment has, indeed, particular importance for the baptized.

1. *The obligation to provide for the needs of the Church* (§ 1)

a) Vatican Council II teaches us that the Church, despite not having a purpose of a political, social and economic nature, does need human resources to achieve its mission (*LG* 8 d; *GS* 76 e). In particular, it should have at its disposal those temporal goods needed for the worthy celebration of divine worship, for the honest sustenance of its ministers and for other ends inherent to it: primarily works of apostolate or of charity (*PO* 17 c; c. 1496 *CIC*/1917).

The inherent right of the Church, independent of any civil power, to acquire, retain, administer, and dispose of these goods (c. 1254 § 1), involves, among other things, its right to demand from the faithful the assistance needed to dispose of them (c. 1260; c. 1496 *CIC*/1917). This is a demand which the Council itself has remembered in many ways, for example, by stressing the true obligation of all the faithful to ensure that priests do not lack the means to live decently and with dignity (*PO* 20 a); by indicating the general duty of all the faithful to assist the missions, not only with prayers and acts of mortification, but also with material means (*AG* 36 and 38; *AA* 10 c); by recommending to priests that they devote their economic resources exceeding their needs to the good of the Church and to works of charity (*PO* 17 c); etc.[1]

But the obligation of the faithful to provide for the needs of the Church derives not only from the "inherent right [of the Church] to require from the faithful whatever is necessary for its proper objectives" (c. 1260); but also—and even more radically—from the shared responsibility of the baptized in the single mission of the Church (cc. 204 § 1, 208, 210), which suggests that no one should fail to take note of the material needs which the achievement of that mission entails, by contributing to satisfying those needs generously, to the extent of one's own possibilities.[2] This holds true, both whenever those needs refer to one's own particular Church or whenever they affect other particular churches (c. 1225 §§ 3–4), or, naturally, the universal Church (*CD* 6; *PO* 21 a).[3]

b) The assistance which the faithful should render to provide for "the appropriate support of the ministers" corresponds, in addition, to an au-

1. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos* (Pamplona 1987), p. 97; G. FELICIANI, *Il popolo di Dio* (Bologna 1991), pp. 46–47.
2. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 96–97; J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), p. 143.
3. Cf. PAUL VI, Ap. Exhort. *Nobis in animo*, March 25, 1974, in *AAS* 66 (1974), p. 185.

thentic duty of theirs,[4] since, as Vatican II has pointed out, "completely devoted as they are to the service of God in the fulfillment of the office entrusted to them, priests are entitled to receive a just remuneration. For *the laborer deserves his wages* (Lk 10:7), and *the Lord commanded that they who proclaim the Gospel should obtain their living by the Gospel* (1 Cor 9:14). For this reason, if no other provision is made from some other source for the just remuneration of priests, the faithful are bound by a real obligation of seeing to it that the necessary provision for a decent and fitting livelihood for the priests is available" (*PO* 20 a). It is logical that this line of reasoning, together with the right and obligation invoked above, should be applied to all sacred ministers (c. 281), whose fitting sustenance is protected in the *CIC* in a sufficient number of specific cases (cc. 269,1°, 295 § 2, 384, 402 § 2, 538 § 3, 707 § 2, 1350 § 1), and even "lay people who are pledged to the special service of the Church, whether permanently or for a time" (c. 231). Therefore, in this canon, as of the first *schemata* in the *LEF*, the term "ministers" is used, and not the expression "sacred ministers," in order to describe the content of this obligation of the baptized.[5]

c) The faithful can satisfy their duty to provide for the needs of the Church in multiple ways: from donations (alms, contributions, wills, etc.), which are given spontaneously (c. 1261 § 1), through economic offerings requested by the ecclesiastical authority on certain occasions (cc. 1262, 1264), or the taxes which the diocesan bishop has the right to impose on public juridic persons subject to his jurisdiction, and, even in cases of grave necessity, on individuals and other juridic persons (c. 1263).

On the other hand, given that specific forms adopted to render some of the acts of economic assistance can vary significantly, by virtue of marked differences in circumstances which can occur in various countries as a result of the different civil laws—unilaterally or by agreement—in effect it can be understood that the *CIC* leaves ample margin of discretion to the initiatives of the particular legislator, and that the Bishops' Conferences are also responsible for regulating appeals for subsidies made within their territory (c. 1262).[6]

It is appropriate to point out that the obligation sanctioned in this canon extends, in addition to economic offerings, to personal offering by means of which the faithful can help to meet the needs of the Church. In effect, performance of works of the apostolate and of charity, and celebra-

4. Cf. A. del Portillo, *Fieles y laicos*..., cit., pp. 94–96.

5. Cf. CodCom, "Textus prior LEF, c. 16," in *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972), p. 504; J.H. Provost, commentary on c. 222, in *The Code of Canon Law. A text and commentary* (New York 1985), pp. 156–157; H.J.F. Reinhardt, commentary on cc. 209–223, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1987), p. 222/1.

6. Cf. G. Feliciani, *Il popolo*..., cit., pp. 47–48.

tion of divine worship itself, can demand not only monetary contributions and other material means, but also offerings of a personal nature, such as number 10 of *Apostolicam actuositatem* makes clear, in which lay people are asked to sustain missionary initiatives "with material, or also personal, support."[7]

d) It does not seem that this duty is to be exclusively imposed in regard to activities of the Hierarchy or to "official" ecclesiastical institutions, since there can be no doubt that the institutions and activities that are born from free initiatives of the faithful also contribute to fulfill the apostolic and charitable mission of the Church.[8]

Finally, to provide for the needs of the people of God is not only a duty of the faithful, but also a right, "which means that the faithful have the right in the Church to undertake initiatives to contribute to meeting these needs: foundations, pious institutes, bequests, legacies, etc."[9]

2. *The duty to promote social justice and to help the poor* (§ 2)

a) The duty to promote social justice and the duty to help the poor are obligations which are incumbent on all people, as a logical consequence of the right of each person "to possess part of the goods for themselves and for their families" (*GS* 69 a). But they are incorporated here among the duties inherent to the faithful because, for the baptized, they assume special connotations.[10]

In fact, given that Christian revelation "leads us to a deeper understanding of social life" (CCC, 2419), and given that the entire Church has the obligation to "work so that mankind becomes capable of correctly restoring the order of temporal goods and of guiding them towards God through Jesus Christ" (*GS* 23 a), it can be understood that it forms part of the mission of the Church to strive "to inspire just attitudes with respect to earthly goods and socioeconomic relationships" (CCC, 2420), and that the duty of all to "ensure that the administration and the distribution of created goods be placed for the use of everyone" is a "compelling duty" for all Christians.[11]

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7. Cf. P.-J. VILADRICH, "La declaración de derechos y deberes de los fieles," in REDACCIÓN IUS CANONICUM, *El proyecto de la Ley Fundamental de la Iglesia* (Pamplona 1971), p. 153; J. HERVADA, *Elementos de...*, cit., p. 143; G. FELICIANI, *Il popolo...*, cit., p. 48.

8. Cf. P.-J. VILADRICH, "La declaración de derechos...," cit., p. 153; J. HERVADA, *Elementos de...*, cit., p. 143; G. FELICIANI, *Il popolo...*, cit., p. 48.

9. J. HERVADA, *Elementos de...*, cit., p. 143. Cf. P.-J. VILADRICH, "La declaración de derechos..." cit., p. 153.

10. Cf. G. FELICIANI, *Il popolo...*, cit., p. 48.

11. Cf. JOHN XXIII, *Radiomensaje*, September 11, 1962, in *AAS* 54 (1962), p. 682.

In regard to charity towards the poor, closely linked to social justice—since "all created things would be shared fairly by all mankind under the guidance of justice tempered by charity" (*GS* 69 a)—the duty to assist the poor emerges in the Christian with a greater force and urgency because of 'the precept of the Lord,' according to God's design."

Even though the language of the Code, when alluding to that precept, does not make any specific citations, that of "Christian charity" can be undoubtedly understood as such, which distinguishes the true disciples of Christ. This is the charity to which the Lord certainly alluded as an authentic precept of His, of which He Himself is not only the model (Jn 13:34), but also the recipient (Mt 25:40), and which He exemplified in a particular way towards the poor, showing special favor towards them (Mt 12:41–44), and indicating that "as you did it to one of the least of these my brethren, you did it to me" (Mt 25:40).

b) The duty to promote social justice demands that the faithful, in the first place, be at least sufficiently knowledgeable with the requirements that this entails, according to the teachings of the Church, as implicitly stated in c. 38 of the "De Populo Dei" the 1977 *schema*, the precedent of this prescription, which begun by stating "*Omnes christifideles, doctrina Ecclesiae in re sociali innixi, iustitiam inter homines populosque promoveant*"; it is thus understood that the CCC, in this sense consistent with the marked concern of pontifical and conciliar magisterium of the last century, has included a basic compendium of social doctrine of the Church among its content (CCC, 1928ff, 2425ff).

The concrete ways to *promote* social justice would depend, on the other hand, on the abilities and circumstances of each person. Some could concern themselves with participating in associations directly intended to animate the temporal order with the Christian spirit (c. 298 § 1); the Hierarchy, by proclaiming the principles referring to the social order in its magisterium (c. 747 § 2) and by fostering initiatives through which social justice would be promoted (c. 528 § 1); lay people, by fulfilling their special duty to permeate and perfect the temporal order of things with the spirit of the Gospel (c. 225 § 2); and all people by considering the impact of their daily activities on social justice in a responsible fashion.[12]

c) The special duty of the faithful to assist the poor "with their own goods" includes conveying economic goods as well as those of a spiritual nature, since the interest in satisfying the needs of the poor—as Vatican II has taught—involves not only material poverty, but also numerous forms of cultural and religious poverty (CCC, 2444).

Nor is it enough that the rich help the indigent with superfluous goods—as the Council has also pointed out—but rather, that all people, according to their own individual possibilities, are to convey and truly

12. Cf. J.H. PROVOST, commentary on c. 222..., cit., p. 157.

offer their goods to poor individuals and peoples, in order for them to help themselves and to further develop themselves afterwards (*GS* 69 a).

This duty, which can be performed on an individual or a collective basis, is not exclusive to lay people. Thus, the *CIC*—in addition to reminding parish priests of their duty to devote themselves with particular diligence to the poor (c. 529 § 1)—includes, among the obligations of all clergy, that of directing the "goods which they receive on the occasion of the exercise of an ecclesiastical office, which are over and above what is necessary for the good of the Church and for charitable works" (c. 282 § 2; cf. *PO* 20 a); and it also indicates that religious institutes "are to do all in their power to donate something from their own resources to help the needs of the Church and the support of the poor" (c. 640).[13]

d) Finally, charitable initiatives, which, in turn, provide for the realization and the final end of justice, can and should reach all people and all needs" (*AA* 8 d), as the Council itself has stressed, by sponsoring the creation of a universal organization of the Church with the specific mission "to arouse the Catholic community to promote the progress of areas which are in want to foster social justice between nations" (*GS* 90 c): the current Pontifical Council "Iustitia et Pax."[14] The legislator also wished to encourage the faithful to work towards this end and towards social justice, by reminding them of the two duties adopted in this paragraph, which are of special significance for Christians today.[15]

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13. Cf. H.J.F. REINHARDT, commentary on cc. 209–223 ... cit., p. 222/2; J.H. PROVOST, commentary on c. 222 ..., cit., p. 157.

14. Cf. *PB*, arts. 142–144; G. FELICIANI, *Il popolo...*, cit., p. 49.

15. Cf. J. HERVADA, commentary on c. 222, in *Pamplona Com.*

223 **§ 1. In iuribus suis exercendis christifideles tum singuli tum in consociationibus adunati rationem habere debent boni communis Ecclesiae necnon iurium aliorum atque suorum erga alios officiorum.**

§ 2. Ecclesiasticae auctoritati competit, intuitu boni communis, exercitium iurium, quae christifidelibus sunt propria, moderari.

§ 1. In exercising their rights, Christ's faithful, both individually and in associations, must take account of the common good of the Church, as well as the rights of others and their own duties to others.

§ 2. Ecclesiastical authority is entitled to regulate, in view of the common good, the exercise of rights which are proper to Christ's faithful.

SOURCES: —

CROSS REFERENCES: cc. 18, 36 § 1, 96, 204 § 1, 208–209, 212 § 1, 220–221, 224, 1148 § 3, 1154, 1348, 1433–1434, 1674, 2°, 1675 § 1, 1687 § 1, 1689, 1696, 1701 § 1, 1708, 1711, 1715, 1727 § 2, 1741, 1752

COMMENTARY

Daniel Cenalmor

In a similar way to what occurs with the articles of declarations of rights, the final section of which indicates limitations on the rights expressed, this last canon of the title "De omnium christifidelium obligationibus et iuribus" contemplates moderation in the exercise of all the rights contained in it. This is a moderation which not only presupposes limitations, but also fosters these rights, and, as can be inferred from the language of this canon, it is equally valid for the other rights of the faithful.[1]

Paragraph 1 deals with what could be called intrinsic or subjective moderation of rights of the faithful themselves, while § 2 is concerned with extrinsic or objective moderation exercised by the ecclesiastical authority. Each one refers—as explicitly stated in the law—to the "exercise of rights," and not to the rights themselves, although the common good of

1. Cf. CodCom, "Relatio super priore schemate LEF," p. 84, in *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa* (Brescia 1972), p. 582.

the Church, the rights of others and provisions of the Hierarchy could also act as factors limiting the rights themselves.[2]

The two paragraphs in this canon originate in the *LEF* draft, and appear to be inspired by *Dignitatis humanae* 7, which was quoted as a source in some *schemata.*[3] *Dignitatis humanae* 7 speaks of three principles to be observed "*in usu omnium libertatum*": the principle of personal and social responsibility—invoked in the explanatory *Relatio* of the *Textus* of the *LEF* in regard to § 1;[4] that of the competence of authority or of public order—which relates to § 2; and that of maximum freedom. While the text of the canon does not allude directly to this last principle, we think that it should also be kept in mind in order to interpret this norm properly, insofar as it is compatible with the nature of the Church (bearing in mind that the lack of explicit reference to the principle could reflect the desire on the part of the draftsmen to avoid applying it in a manner excessively parallel to its application in civil societies).

1. *Subjective moderation of the exercise of rights* (§ 1)

a) *Dignitatis humanae* 7 explains the principle of personal and social responsibility in the use of all liberties, pointing out that "in exercising their rights, individuals and social groups are bound by the moral law to have regard for the rights of others, their own duties to others and the common good of all."

The parallel between c. 223 § 1 and this conciliar text is remarkable, despite the fact that there exist some differences between them apart from the necessary terminological adjustments required to apply such a principle to the governance of the Church. Thus, it is not mentioned that the obligation which is under discussion originates in moral law, and therefore, in divine law, which can be explained for reasons of legislative moderation. Furthermore, in contrast with the text of *Dignitatis humanae*, there is a desire in this canon to place the common good of the Church before other factors which the faithful are to consider when exercising their rights, which should likewise not strike us as strange, since the obligation of the faithful to keep "the common good of the Church" in mind assumes a concrete manifestation of the duty to preserve commun-

2. Cf. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), pp. 104–105.

3. Cf. T. RINCÓN-E. TEJERO, "Texto bilingüe (del Textus emendatus de la LEF)," in REDACCIÓN IUS CANONICUM, *El proyecto de la Ley Fundamental de la Iglesia* (Pamplona 1971), p. 31; P.-J. VILADRICH, "La declaración de derechos y deberes de los fieles," in ibid., p. 150; J.M. PROVOST, commentary on c. 223, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 158.

4. Cf. CodCom, "Relatio super priore schemate...," cit.

ion always (c. 209 § 1),[5] which, as we have seen, is the most basic duty of all baptized people and the fundamental limit and criterion for exercising all other rights and obligations of the faithful (see commentary on c. 209).

b) What we have just said does not imply that the "common good of the Church" is restricted only to those factors immediately affecting communion with it, but also that this expression in general includes all that transcends the good of the individual and the interests of the ecclesial community.

As the canon indicates, the faithful should take into account, when exercising their rights, in addition to the common good of the Church, "the rights of others and their respective duties towards others." Even though this latter expression—already used by the Council—may seem repetitive, since the rights of others entail, in and of themselves, the existence of a correlative duty, in reality it is not. Thus, duties towards others do not always have to be correlative to rights; they can be solely moral duties, and the latter are also to be taken into account when deciding whether to exercise a given right or not, or whether to live it in a correct manner. Thus, for example, some members of the faithful may see themselves particularly compelled to exercise their right to receive a deeper formation in the sacred disciplines, if they consider that, in their circumstances, they could better fulfill their duty to carry out the apostolate.

c) This prescription—as we already have indicated—refers to all rights of the faithful in the Church: those contained in this title, as well as the other rights which are recognized in the canonical system, including those rights to be exercised when "joined together in associations."

The term "association" is to be interpreted here in its broadest sense, consistent with its council source, which speaks of "social groups" (*DH* 7b), for which reason it includes not only associations of the faithful, created as such, but also any other grouping of the faithful, whether of a permanent or a temporary nature. There is nothing to prevent this norm from being applied even to hierarchical structures.

2. *Objective moderation of the exercise of rights* (§ 2)

a) By virtue of the principle of competence of the authority or of public order, it is primarily the responsibility of the powers in a society to defend the latter against those abuses which could arise under the pretext of the exercise of rights, without thereby implying that the authority might render that protection in an arbitrary way or unjustly favor one party, but

5. Cf. H.J.F. REINHARDT, commentary on cc. 209–223, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1987), p. 223/1.

rather, pursuant to juridical norms, in accordance with objective moral order (*DH* 7c).

The application of this principle to the Church explains the competence of the ecclesiastical authority to regulate the exercise of the rights inherent in the faithful by focusing on the common good (c. 223 § 2). This competence can only be contested with difficulty, since, when taken together with what precedes, as has already been said, each right in the Church should be exercised in accordance with the logic of communion (c. 209), and it is also undeniable that it falls upon the Pastors to determine what is required for the common good.[6]

But the Hierarchy, when exercising this function, is to respect its limits, even though they may not have been expressly indicated in the canon, such that any act of the power of governance to avoid abuses in the exercise of the rights of the faithful may not be arbitrary and should adhere to divine law and the other juridical norms.

b) Moderation by the ecclesiastical authority of the rights of the faithful, keeping in mind the common good, even though they refer primarily to legislative or executive norms from which they emanate, also includes the exercise of its judicial power.

In regard to rights under this title, the *CIC* contains numerous examples of their regulation by the legislator. This regulation has been sometimes undertaken through genuine developments in the norms—such as that suggested in cc. 298–329 in regard to the right of association (c. 215)—and, in others, by means of various prescriptions scattered throughout the entire *CIC* or in some of its books—such as those which explicitly set forth the demands of the right to receive spiritual assistance (c. 213); and in which can be seen its dual aspect, both positive and restrictive, which moderation entails.

The laws which curtail the free exercise of rights are to be interpreted strictly (c. 18), and the same thing can be said for administrative acts (c. 36 § 1).

Insofar as what is to be understood by "common good" is concerned, we repeat what was indicated when commenting upon the previous paragraph It includes all those factors which are in the interest of the ecclesial community and which connect either immediately or mediately with the principle of communion: the peaceful composition of the rights of the faithful, the ordered co-existence of the latter with justice and charity, the due custody of the ecclesial order, etc. (*DH* 7b).

c) When regulating the exercise of rights inherent to the faithful, the Hierarchy is naturally bound to consider the nature of each right. That is why it can be inferred that, when restricting the expression of the rights

6. Cf. G. FELICIANI, *Il popolo di Dio* (Bologna 1991), p. 25.

contained in this title, special care is to be taken not to undervalue the importance and significance of the common condition of the faithful, which, as we have come to understand, is grounded to a large degree in divine law (see commentaries on cc. 209–222), and is called to extend the scope of its effectiveness to the most diverse fields and relations.[7]

As a result, if ecclesiastical authority has the power to regulate the exercise of rights inherent to and shared by the baptized, it is to keep in mind that this rule finds an inviolable limit in divine law, and that the same common good of the Church demands respect for, and the advancement of, the fundamental rights of the faithful within their just measure. For this reason, any subsequent limitation on those rights should be of an exceptional nature and should be justified on the basis of grave and adequate reasons.[8]

d) During the task of writing the *LEF*, some canonists proposed that fundamental rights of the faithful could be solely restricted by law, without affecting their substance.[9] Even though this suggestion has not been included in the language of the canon, it seems evident that such rights are to be especially protected and minimally restricted, as perhaps has been suggested by eliminating the final clause which appeared in all the *schemata* of this prescription, until its shift from the *LEF* draft to the text of the Code, which stated that the rights inherent to the faithful could also be restricted through incapacitating and disqualifying laws.[10]

In fact, even though the suppression of this clause does not mean to negate that possibility—which the authority of the Church certainly has, and by which it can, for example, establish new impediments for marriage—it denotes, at least, the will of the legislator not to insist overly much on the negative aspects of moderation, so as not to darken the principle of maximum freedom. This is a principle according to which freedom "is not to be curtailed except when and in so far as necessary" (*DH* 7c), and it also fits in the Church as cc. 18 and 36 § 1 denote, in particular in regard to such important rights as those contained in this title of the Code, which concludes with this c. 223.

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7. Cf. ibid., p. 26.
8. Cf. ibid.; idem "I diritti e doveri dei fedeli e dei laici in specie. Le associazioni," in *Il nuovo Codice di diritto canonico. Aspetti fondamentali della codificazione postconciliare* (Bologna 1983), pp. 260ff; J.I. ARRIETA, "I diritti dei soggetti nell'ordinamento canonico," in *Fidelium Iura* 1 (1991), pp. 29–30.
9. Cf. "Lex Ecclesiae Fundamentalis. Bericht über die Arbeitsergebnisse eines Kanonistischen Symposions in München 1971, c. 25 §2," in *Archiv für katholisches Kirchenrecht* 140 (1971), p. 435.
10. Cf. T. RINCÓN-E. TEJERO, "Texto bilingüe...," cit., p. 31; *Comm* 12 (1980), p. 43.

TITULUS II
De obligationibus et iuribus christifidelium laicorum

TITLE II
The Obligations and Rights of the Lay Members of Christ's Faithful

INTRODUCTION

Ernest Caparros

1. *The teaching of Vatican Council II*

Vatican Council II has brought to light in a dazzling way the role of lay people in the ecclesial mission of salvation. The rediscovery of the affirmation of St. Peter, "you are a chosen race, a royal priesthood, a holy nation, God's own people ... once you were no people but now you are God's people" (1 Pt 2:9–10),[1] has given rise to texts rich in meaning for the people of God as a whole, and in particular, for lay people. Full members of the people of God also have, principally, specific tasks to fulfill in the ecclesial mission of salvation. In this way, then, lay people "live in the world ... They are called there by God that by exercising their proper function and led by the spirit of the Gospel they may work for the sanctification of the world from within as a leaven. In this way they may make Christ known to others" (*LG* 31).[2] "The lay apostolate ... is a participation in the salvific mission of the Church itself. Through their baptism and confirmation all are commissioned to that apostolate by the Lord Himself ... Now the laity are called in a special way to make the Church present and operative in those places and circumstances where only through them can it become the salt of the earth. Thus every layman, in virtue of the very gifts bestowed upon him, is at the same time a witness and a living

1. Cf. P. RODRÍGUEZ, "Sacerdocio ministerial y sacerdocio común en la estructura de la Iglesia," in *Romana* 3 (1987), pp. 162–176.

2. Cf. G. LO CASTRO, "La misión cristiana del laico," in *La misión del laico en la Iglesia y en el mundo* (Pamplona 1987), pp. 441–463, especially 447–454.

instrument of the mission of the Church itself "according to the measure of Christ's bestowal." (*LG* 33).

The sources reproduced in each canon refer to other texts, not only to *Lumen gentium*, but also to *Guadium et spes*, *Apostolicam actuositatem*, and many other conciliar documents. It is clear that the faithful considered under this title are those persons whose specific mission is exercised in the world, within earthly realities, since this is where the specific vocation of being the yeast in the dough, the salt of the earth, is put into practice.

2. *The teaching of the Popes*

This teaching of the Council has been developed, and to put it another way, has been driven home by the Popes, who do not cease to recall that "lay people, whose particular vocation places them in the midst of the world and in charge of the most varied temporal tasks, must for this very reason exercise a very special form of evangelization" (*EN* 70); or that "their specific vocation and their mission is that of expressing the Gospel in their lives and, in that way, of inserting the Gospel as leavening into the reality of the world in which they live and work."[3]

Worthy of note is the insistence on the role belonging to lay people in the mission of the Church as a consequence of baptism and of confirmation, as expressed by John Paul II's interventions. The texts in which he develops those subjects, in his apostolic travels as well as his meetings in Rome, are very numerous.[4]

It seems clear that the Pope wishes to reach those mentalities which have not yet fully embraced the great message of Vatican II in this regard, by insisting on the *novus habitus mentis* requested by Paul VI, in order to move beyond, in a greater definitive way, the old vision of the layperson-*longa manus* of the Hierarchy, which spirit still persists, despite the juridical texts, which have faithfully and clearly adopted the teachings of Vatican II.

3. JOHN PAUL II, "Homilía sobre el papel de los laicos," Limerick, October 1, 1979, no. 2, in *L'Osservatore Romano*, ed. in French (hereafter, cited as ORLF) November 9, 1979, pp. 14–15. (English edition: "Task of the Laity: to permeate society with the leaven of the Gospel," Limerick, October 1, 1979, in *L'Osservatore Romano*, October 15, 1979, p. 6).

4. For example, cf. "Homilía para la clausura del Sínodo holandés," January 31, 1980, no. 6, in ORLF February 5, 1980, pp. 1–2 (English edition: "Homily of Pope John Paul in the Sistine Chapel at the Conclusion of the Work of the Synod of Dutch Bishops," January 31, 1980, in *L'Osservatore Romano*, February 11, 1980, p. 2); "Discurso en Campo Grande," July 6, 1980, in ORLF August 29, 1980, pp. 4–5 (English edition: "Meeting with Constructors of Pluralistic Society," July 6, 1980, in *L'Osservatore Romano*, August 4, 1980, p. 5); "Discurso en la V asamblea del Consejo pontificio para los laicos," October 5, 1981, in ORLF October 13, 1981, p. 4 (English edition: "Pope John Paul to the Council for the Laity," October 5, 1981, in *L'Osservatore Romano*, October 19, 1981, p. 4); "Homilía en Toledo," November 4, 1982, in

3. *The justification for a special title for the lay faithful*

The doctrine generally accepts[5] that, notwithstanding the name of this title, the obligations and rights subject to regulation are not exclusive to the lay members of the faithful discussed in the tripartite division of c. 207 § 2, that is, those of the laity who may be singled out through a positive note of secularity, inasmuch as they are neither priests nor members of institutes of consecrated life or societies of apostolic life—in other words, secular lay people. Agreement also exists that the definition of lay people in the present title should be focused under the terms of the definition confirmed by c. 399 of the *CCEO* and reaffirmed by the CCC,[6] thereby ruling out all ambiguity.

What is under discussion here are obligations and rights, some of which are rooted in natural law, that belong to all members of the people of God. Even those mentioned in c. 226, attributed to parents, are not in any way the exclusive patrimony of lay people, given that, under certain conditions, married men may be ordained deacons in the Latin Church, and they may be ordained presbyters in the Eastern Churches, without overlooking the married pastors of Christian Churches, who are subsequently ordained in the catholic Church with a dispensation from the obligation of celibacy. In other words, the set of rights and duties recognized under this title, while paradigmatically lay in nature, are not reserved exclusively for the lay members of the faithful.

Why, then, is there a special title used to frame these obligations and rights? Perhaps the legislator has considered it as an opportunity (or even a matter of historical necessity) to clarify and highlight the advances achieved by Vatican Council II in rediscovering the role and the participation of lay people in the saving mission of the Church. It seems fairly evident that the required change in mind-set is still in the process of being

ORLF November 16, 1982, pp. 13–14; "Discurso a la Conferencia Episcopal de Papúa-Nueva Guinea e Islas Salomon," May 8, 1984, in ORLF May 15, 1984, pp. 9–10 (English edition: "Meeting with the Bishops of Papua New Guinea at Port Moresby," May 8, 1984 in *L'Osservatore Romano*, May 14, 1984, p. 16).; "Discurso en el encuentro con el clero, los religiosos y los laicos," May 11, 1984, no. 5, in ORLF May 22, 1984, p. 6 (English edition: "Meeting with the Clergy, Religious and Laity in Bankok," May 11, 1984, in *L'Osservatore Romano*, May 21, 1984, p. 8).; *CL* 32–44 and passim; "Discurso al Consejo pontificio para los laicos," November 23, 1990, no. 4, in ORLF December 4, 1990, p. 4 (English edition: "Pope Addresses Plenary of Council for Laity," November 23, 1990, in *L'Osservatore Romano*, December 3, 1990, p. 5).; "Mensaje de Juan Pablo II para la Jornada mundial de las misiones," no. 1, in ORLF June 11, 1991, p. 12; "Homilía en Angra do Heroismo," May 11, 1991, no. 17, in ORLF May 21, 1991, p. 7; *PDV* 17, 18, 59, 74 and passim; etc.

5. Cf. J. PROVOST, in *The Code of Canon Law: a Text and Commentary* (New York 1985), p. 160; D. LE TOURNEAU, *Le Droit canonique* (Paris 1988), p. 58; J. HERVADA, *Misión laical y formación*, in idem, *Vetera et Nova* II (Pamplona 1991), p. 1278.

6. Cf. *CCC*, nos. 897 and 1269.

fulfilled and that the lay mind-set has not yet entirely taken root, either among the clergy, among the laity, or among the members of institutes of consecrated life. The road which has yet to be traveled seems fairly long, given that it is easier to resort to the idea of the ministry[7] as promotion of the laity than that of the rights and duties which are to be recognized by each of the baptized, with the necessary sense of reciprocity of all relationships of justice, which demands reciprocal duties and rights towards other members of the baptized, whether members of the Hierarchy or not. Evidence of the road yet to be traveled is the intervention of the Holy See through the interdicasterial Instruction *Ecclesiae de Mysterio*, of August 15, 1997, regarding some issues related to the collaboration of the lay faithful in the ministry of the priests.

It is necessary to point out here that, inasmuch as models for the laity are ancient or little known, the tendency can occur (on the part of the clergy as well as of the laity) to consciously or unconsciously *clericalize* the laity, against which the Synod on the laity has warned us.[8] We can thus rejoice in the canonization of Josemaría Escrivá, for the rich lay message which he contributes, and in the beginning of the beatification process of Robert Schuman. The challenge lies precisely in helping all baptized persons not to lose their sacramental or charismatic identity. The canons of this title are, and should be even more so in the future, highly suitable means to face this challenge.

It seems clear that the historical need to insist on the rights of lay people has not yet ceased, since the *CCEO* also devotes its title XI to lay people, a title whose similarities to ours are evident.

4. *Conclusion*

Shortly after promulgation of the *CIC*, some amused themselves with counting the canons devoted to lay people, and to deduce, from their reduced number, an abandonment of the laity. Some even managed to affirm that very little space was left to lay people in the Church. Reasoning of this kind, typical of the *habitus mentis* showing a hierarchical bias prior to Vatican II, does not seem capable of conceiving that the absence of regulation, or regulation reduced to the mention of right or a duty, may be due to the recognition of the legitimate freedom of action of the baptized (certainly always conjoined with responsibility), and as a consequence, to

7. This concept has been specified in this context in EdM, art. 1.

8. Cf. "Vocation et mission des laïcs dans l'Église et dans le monde vingt ans après la Concile Vatican II, Document de travail du Secretariat du Synode des évêques," nos. 22–24, 27–37 and passim, in *La documentation catholique* 1894 (April 25, 1985), pp. 444–456; *CL* 9, 15, 23 and *passim*; *PDV* 59, 74 and *passim*; clarifications confirmed in EdM: cf. especially nos. 9, 15–17.

the incompetence of the Hierarchy, *ex rei natura*, to regulate the details, the how, where, and when of the action of the confirmed-baptized[9] in exercising the common priesthood at the heart of temporal realities.

9. Cf. J. I. ARRIETA, "Coordenadas fundamentales de la actuación de los fieles laicos en la sociedad temporal y en la Iglesia," in A. DE LA HERA-E. MOLANO-A. ÁLVAREZ DE MORALES (dir.), *Las relaciones entre la Iglesia y el Estado* (Madrid-Pamplona 1989), pp. 832–836 and 840–845. Cf., for recent clarifications from the Holy See, Interdicasterial Instr. EdM.

224 **Christifideles laici, praeter eas obligationes et iura, quae cunctis christifidelibus sunt communia et ea quae in aliis canonibus statuuntur, obligationibus tenentur et iuribus gaudent quae in canonibus huius tituli recensentur.**

Lay members of Christ's faithful have the obligations and rights enumerated in the canons of this title, in addition to those obligations and rights which are common to all Christ's faithful and those stated in other canons.

SOURCES: —

CROSS REFERENCES: cc. 129 § 2, 207 § 1, 208–223, 225–231, 275 § 2, 278 § 3, 759, 774 § 2, 776, 835 § 4, 907, 1063–1064, 1366, 1390, 1398, 1427 § 3.

COMMENTARY

Ernest Caparros

1. *The effect of the codification*

This canon invokes the effect of codification, in other words, that manner of proceeding, natural to the jurist of a codified juridical system, which prompts him to trace all the outlines of each provision at the heart of the Code. Thus, when we refer to the obligations and rights of the lay faithful, the first sentence of this canon puts us on guard: those obligations and rights are regulated here and there in the Code, even though a certain regrouping occurs in the canons that follow. It is evident that reference must be made to the preceding title, given that, in many cases, the obligations and rights concerning lay people are nothing other than the explicit enunciation of recognized rights, or of obligations imposed on all the faithful. It also becomes obvious that it is necessary to establish concordances with various canons in the present title. But, in order to offer a total perspective, it is necessary that students of c. 224 bear in mind the canons related to each of the norms in titles I and II of part I of book II (see the cross-references at the beginning of the various canons).

2. *The lay faithful*

The language of this canon does not leave any doubt that the members of the people of God are determined to be those to whom this title is

addressed (see introduction to the title: number 3). It is sufficient now to recall that these canons *primarily consider, while not in an exclusive way,* lay people who are endowed with a note of secularity, in other words, the lay people of c. 207 § 1. They can be distinguished, therefore, by the positive aspect of being committed in *negotia saecularia*[1] and by the negative aspect of not having received the sacrament of orders or of not being members of an institute of consecrated life or of a society of apostolic life.[2]

Some current tendencies, most likely as a result of a poorly understood wish to promote lay people, attempt to multiply the lay "ministries" and to reduce the essential difference between the priestly ministry of the faithful who have received the sacrament of orders and the other members of the people of God, to whose service they have been ordained. It seems clear that this confusion between the ministerial or hierarchical priesthood and the common priesthood of all the members of the faithful is not conducive to an understanding of the obligations and rights of the members of the people of God.[3] The difference, deeply rooted in divine institution (cf. *LG* 10; c. 207 § 1), is even stressed by some prohibitions, imposed sometimes on the clergy (cc. 275 § 2, 278 § 3), and other times on lay people (c. 907).

However, that difference, however pronounced it may be, should not be understood as the absence of cooperation of lay people in certain aspects of the exercise of the priestly,[4] prophetic[5] and royal[6] *munus* of Christ (cf. CCC, 901–913). The difference allows us, on the other hand, to discover the otherness of these relations and to determine upon whom given duties should fall (such as those of parents, within the scope of catechesis: cc. 774, 835 § 4), and upon whom weighs a reciprocal obligation (such as those of the pastors in transmitting adequate formation: cc. 776, 1063, 1064).

Thus, in this way, the difference should be accompanied by an attitude of cooperation in greater harmony. But let us also not forget that controversies may arise, and that in those cases, it is appropriate to address them to the competent diocesan tribunal (cf. c. 1427 § 2).

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1. Cf. R. LANZETTI, "L'indole secolare propria dei fedeli laici secondo l'Esortazione Apostolica post-sinodale 'Christifideles laici'," in *Annales Theologici* 3 (1989), pp. 35–51.
2. Cf. *LG* 27, 31, 33; *CCC*, 897–899.
3. Cf. JOHN PAUL II, "Alocución a los participantes en el Simposio, organizado por la CpC, 'La participación de los laicos en el ministerio sacerdotal'," April 22, 1994, in *L'Osservatore Romano*, Weekly Edition, May 11, 1994, p. 3. (English Edition: "Participation of the Lay Faithful in the Preistly Ministry," April 22, 1994, in *L'Osservatore Romano*, Weekly Edition, May 11, 1994, p. 3.)
4. Cf., e.g., cc. 230, 861 § 2, 910 § 2, 943, 1112, 1168.
5. Cf., e.g., cc. 759, 766, 774 §2, 784–785, 835 §4.
6. Cf., e.g., cc. 129 § 2, 443 §4, 492, 494, 517 § 2, 536, 537, 1421 § 2, 1424, 1428.

Finally, abstaining from the exercise of certain rights or the non-performance of certain obligations may give rise to ecclesiastical sanctions, such as, for example, those provided for parents who do not properly look after their obligations to baptize their children and to educate them within the catholic Church (c. 1366), for those who do not respect the right to a good reputation recognized under c. 220 (c. 1390), or for those who procure an abortion (c. 1398).

225 **§ 1. Laici, quippe qui uti omnes christifideles ad apostolatum a Deo per baptismum et confirmationem deputentur, generali obligatione tenentur et iure gaudent, sive singuli sive in consociationibus coniuncti, allaborandi ut divinum salutis nuntium ab universis hominibus ubiqueterrarum cognoscatur et accipiatur; quae obligatio eo vel magis urget iis in adiunctis, in quibus nonnisi per ipsos Evangelium audire et Christum cognoscere homines possunt.**

§ 2. Hoc etiam peculiari adstringuntur officio, unusquisque quidem secundum propriam condicionem, ut rerum temporalium ordinem spiritu evangelico imbuant atque perficiant, et ita specialiter in iisdem rebus gerendis atque in muneribus saecularibus exercendis Christi testimonium reddant.

§ 1. Since lay people, like all Christ's faithful, are deputed to the apostolate by baptism and confirmation, they are bound by the general obligation and they have the right, whether as individuals or in associations, to strive so that the divine message of salvation may be known and accepted by all people throughout the world. This obligation is all the more insistent in circumstances in which only through them are people able to hear the Gospel and to know Christ.

§ 2. They have also, according to the condition of each, the special obligation to permeate and perfect the temporal order of things with the spirit of the Gospel. In this way, particularly in conducting secular business and exercising secular functions, they are to give witness to Christ.

SOURCES: § 1: PIUS PP. XII, Alloc., 14 oct. 1951 (*AAS* 43 [1951] 784–792), PIUS PP. XII, Alloc., 5 oct. 1957 (*AAS* 49 [1957] 922–939); *LG* 33; *AA* 2, 3, 17; *AG* 21, 36
§ 2: *LG* 31; *AA* 2–4, 7; *GS* 43

CROSS REFERENCES: cc. 114, 209, 211, 212, 213, 215, 220–223, 227, 229, 327, 383 § 1, 386, 387, 528–530, 747, 773, 774 § 2, 776, 778, 780, 793–797, 804–807, 811, 813, 822 § 3, 823, 1260, 1261

COMMENTARY

Ernest Caparros

1. *Canons 211 and 225*

The study of the texts of Vatican Council II allows us to establish a fairly precise juridical framework with reference, on the one hand, to the moral duty of all the faithful—and specifically lay people—to exercise the apostolate, and, on the other, to the right (*ius nativum*), rooted in baptism,[1] to participate in the saving mission of the Church, without the need of any mandate other than that of Christ (cf. *AA* 3).

Applying to lay people the duty-right of all the faithful, as provided for under c. 211, to continue the divine message of salvation, c. 225 specifies that this general obligation is even more urgent since human beings can receive the proclamation of the Gospel and know Christ only through them (the laity).[2]

On the other hand, it is interesting to point out that c. 14 *CCEO* is practically identical to c. 211 *CIC*; and it is also worthy of note that in the *CCEO*, the provisions on the faithful and their rights and obligations are grouped under title I, only preceded by six preliminary canons. In contrast, according to the methodology followed in that Code, lay people are found in title XI, since it has instead given priority to the structures of the ecclesiastical organization rather than to the members of the people of God. In that title XI, in regard to lay people, c. 406 *CCEO* does not reproduce more than the last sentence of c. 225 § 1 of the *CIC*, making a cross-reference to c. 14 *CCEO*. What is involved, then, are identical provisions, for all practical purposes.

Thus, in this way, the moral duty, as well as the right to extend the message of salvation, which is an obligation of all members of the people of God, is carried out in an essential way by lay people. In fact, in the vast majority of circumstances, people can only manage to know Christ and to receive a living testimony of the Gospel through lay people: "Their activity in ecclesial communities is so necessary that, for the most part, the apostolate of the pastors cannot be fully effective without it" (CCC, 900; cf. *LG* 33).

1. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia*, 3rd ed. (Pamplona 1991), pp. 117–118 and passim (English translation: *Faithful and laity in the Church*, Shannon 1976).
2. Cf. G. LO CASTRO, "La misión cristiana del laico," in *La misión del laico en la Iglesia y en el mundo* (Pamplona 1987), pp. 456–460.

2. *The duty-right relative to the apostolate*

The moral duty to carry out the apostolate, a general obligation of all the faithful, particularly lay people, cannot be urged juridically, given that it involves an ascetic consequence linked to another moral obligation, also arising from baptism: that of seeking sanctity (cf. c. 210; cf. c. 13 *CCEO*). Thus, a member of the faithful may not be constrained to carry out the apostolate on the sole basis of this duty, but neither can one be prevented from doing so. What is dealt with here is a right that falls within the sphere of what has been called the *conditio libertatis*.[3] In effect, the right that belongs to each member of the faithful, and more specifically to each layperson, to exercise the apostolate is a true right capable of being demanded *erga omnes*, and it calls upon the obligations of other members of the faithful, and in particular, of the pastors. We find ourselves, then, before an inter-subjective social situation of a juridical nature.[4] Among the obligations of the pastors, recognized under the law are those of providing assistance from spiritual riches, the word of God and the sacraments (c. 213), or that of facilitating lay people to acquire the knowledge of Christian doctrine (c. 229).

On the other hand, given that this involves one of the fundamental rights, we find ourselves faced with a right that should be protected if we wish to respect the founding will of Christ.[5] It is a general right (belonging to all the faithful), perpetual and inalienable;[6] but, precisely because it involves one of the manifestations of the sphere of autonomy and freedom of all the faithful, and in particular of lay people, guaranteed to all by the Code—but clarified for lay people, above all, by cc. 225 § 2 and 227—it is impossible to foresee all its applications in the abstract: "The initiative of lay Christians is necessary especially when the matter involves discovering or inventing the means for permeating social, political, and economic realities with the demands of Christian doctrine and life. This initiative is a normal element of the life of the Church" (CCC, 899).

3. Cf. P.J. VILADRICH, *Teoría de los derechos fundamentales del fiel* (Pamplona 1969), p. 125 and *passim*; P. LOMBARDÍA, "Los laicos en el derecho de la Iglesia," in *Ius Canonicum* 6 (1966), pp. 339–374; idem, "Los derechos fundamentales del cristiano en la Iglesia y en la sociedad," in E. CORECCO-N. HERZOG-A. SCOLA (eds.), *Les droits fondamentaux du chrétien dans l'Église et dans la société* (Freiburg in Brisgau—Milan 1981, pp. 15–31), especially pp. 17–18; J. HERVADA-P. LOMBARDÍA, *El Derecho del pueblo de Dios* I (Pamplona 1970), pp. 294–309; J. HERVADA, *Elementos de Derecho constitucional canónico* (Pamplona 1987), pp. 126–139.

4. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia* , cit., p. 118; cf. *AA* 24.

5. Cf. J. HERVADA, *Pensamientos de un canonista en la hora presente* (Pamplona 1989), p. 124.

6. Cf. P. LOMBARDÍA, *Lecciones de Derecho Canónico* (Madrid 1984), pp. 80–82; J. HERVADA, "Los derechos inherentes a la dignidad de la persona humana," in *Humana iura* 1 (1991), pp. 345–376.

3. *The necessary flexibility of the solutions*

In no place (conciliar texts, interventions of the Popes, juridical provisions) can precise indications be found regarding the mode of fulfilling these apostolic tasks. In fact, in the endeavor of lay people to seek sanctification of the world through the testimony of Christ in temporal realities and through them, there does not exist in any way whatsoever a "Catholic solution," applicable to the management of the temporal order or to the performance of secular offices. On the contrary, instead there exists great diversity and, therefore, freedom of alternatives to put into practice, according to the spirit of the Gospel, and always keeping in mind the teachings of the Magisterium (hierarchical communion). What is involved, in short, is an attempt to develop what has been described, using an expression that is very much to the point, as a *lay mentality.*[7]

It seems evident that the task of Christianizing the temporal order cannot be achieved by people other than those who, conscious of their faith, form part of that temporal order; of people who are in the world, without being worldly.[8] But it becomes not less evident that it is impossible to contribute uniform solutions to the multiple questions that can be raised in various circles, cultures, countries, etc. The challenge is immense, and flexibility and variety are part of the means needed to meet it. Thus, it is normal that the Code (also the *CCEO*) is limited to establishing the obligation—the moral duty—to give testimony, to imbue the temporal order with an evangelical spirit, thereby exercising freedom, without determining ulterior reasons. In fact, to specify the ways in which this can be done, to give orders, to establish the scope of action in other ways, would be to go against the principle of freedom and of autonomy in c. 227.

In all other respects, it does not have to be said that, in order to fulfill this moral duty, the laity can act alone, but they may also do so by taking advantage of the diverse forms of association provided for under canon law as well as in the law of the country. It should not be forgotten, however, that the forms of associations of the apostolate are not necessary, and that even less so is a *specific form of association.* The principle of freedom should also be given preference in this alternative.

This principle of freedom and of autonomy is juridically guaranteed at the present time,[9] and constitutes an inalienable right of lay people.

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7. Cf. J. ESCRIVÁ, "Passionately loving the world," (homily given on October 8, 1967), in *Conversations with Monsignor Escriva de Balaguer*, 2nd ed. (Shannon: Ecclesia Press, 1972), no. 117; A. DEL PORTILLO, "Intervista sul fondatore dell'Opus Dei," a cura di Cesare Cavalleri (Milan 1992), pp. 28–38; J. HERVADA, *Misión laical y formación*, in idem, *Vetera et Nova*, II (Pamplona 1991), pp. 1288–1291.

8. Cf. J. HERRANZ, "Le statut juridique des laïcs: l'apport des documents conciliaires et du Code de droit canonique," in *Studia Canonica* 19 (1985), p. 254, note 14.

9. Cf. c. 227; also cf. c. 402 *CCEO*; *GS* 43; *CL* 20–23.Cf. c. 227; also cf. c. 402 *CCEO*; *GS* 43; *CL* 20–23.

It should always constitute a guide in the search for solutions related to the obligation of lay people to Christianize the world. This should allow us to let ourselves be illuminated by a *lay mentality*, and to avoid any approach to the problem that does not consider lay people other than through a clericalized perspective, which does not envision for them functions to take the place of the clergy, in such a way that to speak about the role of lay people becomes the equivalent of speaking about "intra-ecclesial ministries," or that cannot conceive of the participation of lay people in the saving mission of the Church unless framed by the Hierarchy, thereby eliminating the vast scope of autonomous and responsible participation of lay people in the re-Christianization of society.

The specific vocation of the laity imposes on them the responsibility and the obligation to make Christ present through His testimony and His word. What is not involved here are those specific tasks which the Hierarchy may entrust to one layperson or another, by virtue of their particular competence,[10] or for the purpose of relying on the point of view of a layperson in a collegial organization.[11] Rather, we are speaking here about the mission inherent to the layperson *iure proprio*, as a result of the gifts received in baptism and in confirmation, without requiring any other specific mission. The world, given its multiplicity of situations and of temporal realities, is the vast field of this mission of the laity.

4. *The obligations corresponding to rights*

The framework clearly delineated in c. 225, as we have already stated, is nothing other than the specific application to lay people of the right and obligation of all the faithful to exercise the apostolate,[12] which represents, in and of itself, the result of the general obligation to seek sanctity.[13] But lay people may not fulfill their obligations if they are not sustained by the spiritual riches of the Church, and, above all, by the word of God and the sacraments; for this reason, they are recognized as having the right to receive assistance from the spiritual riches[14] (see commentary on c. 229). The exercise of these rights imposes, therefore, reciprocal obli-

10. Cf., e.g., cc. 492 §1, 822 §3, 1421 §2.
11. Cf., e.g., cc. 443 §4, 463 §2, 512, 536.
12. Cf. cc. 211 and 216; also cf. *CCEO*, cc. 13 and 19; A. MARZOA, "Apostolado laical individual," in *Ius Canonicum* 26 (1986), pp. 627–650.
13. Cf. c. 210; also cf. *CCEO*, c. 13; J.I. ARRIETA, "Formación y espiritualidad de los laicos," in *Ius Canonicum* 27 (1987), pp. 79–97; J. HERVADA, *Misión laical...*, cit., pp. 1280–1287.
14. Cf. cc. 217, 229, 747, 773, 776, 778, 780, 794, 795, 804–806, 823; *CCEO*, cc. 20, 404, 595, 617, 624 §§1 and 3, 628, 629, 636, 638, 652.

gations on the pastors,[15] who should seek to offer with diligence all supernatural and spiritual means, as well as formation in doctrine, needed for the laity to be able to fulfill their mission in the world; and this should take into account the specific needs which become evident (cf. c. 212 § 2; c. 15 § 2 *CCEO*).

5. *The service of pastors*

The sacred pastor, and in particular, he to whom a given portion of the people of God has been confided, "sent as he is by the Father to govern his family," is invited to have "before his eyes the example of the Good Shepherd, who came not to be served but to serve (cf. Mt 20:28; Mk 10:45) and to lay down his life for his sheep (cf. Jn 10:11)" (*LG* 27, 34; cf. *PO* 6). In a more specific way, the Decree *Christus Dominus* states: "in exercising his office of father and pastor the Bishop should be with his people as one who serves, as a good shepherd who knows his sheep and whose sheep know him, as a true father" (*CD* 16). John Paul II explains: "Like Christ, *the Bishop, for lay people, is he who serves.*"[16] In *Christifideles laici* it is also stressed: "The mission of the Apostles, which the Lord Jesus continues to entrust to the pastors of his people, is a true service, significantly referred to in Sacred Scripture as *'diakonia'*, namely, service or ministry" (*CL* 22).[17]

This fundamental notion of service—strongly rooted in the Scriptures,[18] very clearly formulated in the documents of Vatican II,[19] and frequently emphasized by the Popes—has not been formally adopted in the norms of the Code. However, it underlies the enumeration of obligations and functions, both of the bishops as well as parish priests.

As we have indicated above (see numbers 2 and 4 above), on the one hand, the rights of lay people are recognized, whether considered as such, or whether viewed from the perspective of the faithful; and on the other, obligations are imposed on the pastors, primarily on those who are at the head of portions of the people of God, but also on members of the presbyterate, in particular, on the parish priests. Let us limit ourselves to point-

15. Cf. A. DEL PORTILLO, "El Obispo diocesano y la vocación de los laicos," in PH. DELHAYE-L. ELDERS (dir.), *Episcopale munus. Recueil d'études sur le ministère épiscopal offertes en hommage à S.E. Mgr. J. Gijsen* (Van Gorcum 1982), pp. 197–205; C.J. ERRÁZURIZ, *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), pp. 33–35.

16. JOHN PAUL II, *Discurso a la Conferencia Episcopal de Irlanda*, September 30, 1979, in ORLF, October 9, 1979, p. 12 (English Edition: "To the Bishops of Ireland," September 30, 1979, in *L'Osservatore Romano*, October 15, 1979, pp. 2–5).

17. Cf. P. RODRÍGUEZ, "Sacerdocio ministerial y sacerdocio común en la estructura de la Iglesia," in *Romana* 3 (1987), especially pp. 173–175.

18. Cf. Mt 20:28; Mk 10:45; Lk 22:26–27; Jn 10:11.

19. Cf. *LG* 27, 34; *CD* 16; *PO* 6.

ing out that, given the specific study which is inherent to the commentary on each canon, that these rights and obligations should be analyzed always bearing in mind the *salus animarum suprema lex* (cf. c. 1752) as a final touchstone; but also from a closer perspective: the moral duty imposed on lay people to Christianize and to sanctify temporal realities with freedom, spontaneity and autonomy, as well as the obligation of the pastors to transmit the word of God, faith and the sacraments in their fullness, within a dimension of service to the people of God.

Let us stress, finally, that this also involves relationships of a juridical nature, in which the sense of otherness must be rooted in the *suum cuique tribuere*. The layperson who wishes to assume his or her moral duty has the right to demand the spiritual and doctrinal assistance of the pastors, in the same way that, for their part, they should faithfully support "what the sacred Pastors, who represent Christ, declare as teachers of the faith and prescribe as rulers of the Church" (c. 212 § 1).

226 **§ 1. Qui in statu coniugali vivunt, iuxta propriam vocationem, peculiari officio tenentur per matrimonium et familiam ad aedificationem populi Dei allaborandi.**

§ 2. Parentes, cum vitam filiis contulerint, gravissima obligatione tenentur et iure gaudent eos educandi; ideo parentum christianorum imprimis est christianam filiorum educationem secundum doctrinam ab Ecclesia traditam curare.

§ 1. Those who are married are bound by the special obligation, in accordance with their own vocation, to strive for the building up of the people of God through their marriage and family.

§ 2. Because they gave life to their children, parents have the most serious obligation and the right to educate them. It is therefore primarily the responsibility of Christian parents to ensure the Christian education of their children in accordance with the teaching of the Church.

SOURCES: § 1: *AA* 11; *GS* 52
§ 2: c. 1372 § 2; *GE* 3

CROSS REFERENCES: cc. 98 § 2, 101, 111 § 1, 212 §§ 2–3, 213, 217, 219, 229, 233 § 1, 386, 387, 528, 529, 774 § 2, 776, 780, 785, 793, 796 § 2, 797–799, 803, 804, 806, 810, 835 § 4, 843, 851, 2°, 855, 867 § 1, 868, 890, 914, 1055 § 1, 1063, 1071 § 1, 6°, 1128, 1136, 1252, 1366, 1478

COMMENTARY

Ernest Caparros

1. *Foundation of the juridical obligation of parents*

Paragraph 1 of this canon (cf. c. 407 *CCEO*) specifically applies the moral duty to exercise the apostolate to married people,[1] recalling that their privileged means of evangelization is precisely marriage and the family (cf. CCC, 902). But in § 2 a very serious (*gravissima*) juridical obligation is imposed on parents: to give their children a Christian education, by

1. Cf. cc. 211 and 225; cf. cc. 14, 401 and 406 *CCEO*.

following the doctrine of the Church. This obligation is obviously accompanied by the recognized right of parents to undertake this task, and is found at the core of the set of rights and obligations within the Church, having repercussions on civil society.

This set of rights and obligations is deeply rooted in the sacrament of matrimony, in that community of their whole life, ordered *indole sua naturali* towards the well-being of spouses and the procreation and education of children, raised by Christ, among the baptized, to the dignity of a sacrament (cf. c. 1055, c. 776 *CCEO*). For this reason, c. 226, with all its ramifications, is applicable to married people, and also to married clerics (despite the terminology of c. 407 *CCEO*, which seems to be limited to lay people), a minority in regard to the entire body of the faithful. The sacrament of matrimony endows them with the necessary graces to be able to fulfill these obligations, formulated in a general and wide-encompassing way in c. 1136 (cf. from the perspective of the obligations of pastors, c. 783 § 1,1° *CCEO*). To this duty-right also pertains an obligation imposed on the pastors of souls, which is formulated in a specific way in c. 1128 (cf. c. 816 *CCEO*): they should ensure that Catholic spouses do not lack the spiritual assistance needed to fulfill their obligations.

Thus, we have two perspectives that can help us in examining this canon.

2. *The rights and obligations of parents*

It should be emphasized that the right of parents to educate their children is an *ius primarium*, according to c. 1136 (cf. c. 783 § 1,1° *CCEO*). Parents should be recognized as the first and primary educators of their children (cf. *GE* 3), knowing that "the right and duty of education are primordial and inalienable for parents."[2] This involves, therefore, a natural right of parents,[3] the recognition of which, both under canon law and in the civil law, carries with it numerous manifestations. This natural right of parents, defended with determination by the Church before state powers, preserves its same scope as a natural law under the canonical system. In other words, the threefold dimension of communion remaining unscathed (cf. c. 205; c. 8 *CCEO*), this natural right of parents to educate their children[4] should be recognized, both concretely and in actual practice—decidedly so whenever there exist educational programs whose con-

2. *CCC*, 2221; cf. *FC* 36; F.G. MORRISEY, "The Rights of Parents in the Education of their Children (cc. 796–806)," in *Studia Canonica* 23 (1989), pp. 429–444, especially pp. 430–434.

3. Cf. *CCC*, 2036; J. HERVADA, "La 'lex naturae' y la 'lex gratiae' en el fundamento del ordenamiento jurídico de la Iglesia," in idem, *Vetera et Nova*, II (Pamplona 1991), especially pp. 1624–1625 (Italian translation: "La 'lex naturae' e la 'lex gratiae' nella base dell'ordinamento giuridico della Chiesa," in *Ius Ecclesiae* 3 (1991), p. 62).

4. Cf. *CCC*, 902, 1914, 2225, 2685.

tent may not be unanimously accepted, provided that this involves matters of opinion. It is obvious that if it no longer involves matters of opinion, but rather of programs that raise doubts insofar as their agreement with ecclesial communion is concerned, we would find ourselves, rather than within the scope of a right, in the face of a serious duty to defend the integrity of the faith. It cannot be forgotten that the law of God is that which should be taught to the faithful as "the way of life and truth" (CCC, 2037), and that the faithful, in addition to the "*duty* to observe the constitutions and decrees conveyed by the legitimate authority of the Church" (ibid.), also have the "right to be instructed in the divine saving precepts that purify judgment and, with grace, heal wounded human reason" (ibid.; cf. c. 213; c. 16 *CCEO*).

a) *The rights of parents in the context of the education of their children*

Canons 226 and 1136—let us recall that the *CCEO* has incorporated the content of those norms in c. 783 § 1,1°, from the perspective of the obligation of the pastors—establish, straight out, the right to education, and this right is seen to be consolidated by other related or complementary rights to the primary right. Within this context, the rights recognized in §§ 2 and 3 of c. 212 (cf. c. 15 *CCEO*) strike us as highly important: parents may find themselves among those of the faithful who *are bound* to express their opinion to the pastors in the area of education. Other rights (such as that of receiving spiritual riches, specifically the word of God and the sacraments,[5] instruction in Christian doctrine,[6] and even that of deeper immersion in the sacred sciences),[7] which parents enjoy in common with the other members of the faithful, are converted into more urgent obligations for the pastors in this case, as a result of c. 1128.[8] Parents should also be able to obtain cooperation and to receive attention from teachers and professors in regard to the education of their children.[9] It is appropriate to point out that canon law recognizes the assistance which parents are entitled to receive from civil society in order to provide their children with a Catholic education (c. 793; c. 627 § 3 *CCEO*); it seems evident that this assistance should even be more strongly promoted on the part of the Church.[10]

In addition to this, cc. 796–799 (cf. cc. 630–631 *CCEO*) recognizes the wide scope of parental rights: to seek the cooperation of educators, to enjoy freedom in choosing schools (*a fortiori*, we might add, in the choice of educational programs within a school), and to ensure that a Catholic,

5. Cf. c. 213; cc. 16 and 783 § 3 *CCEO*.
6. Cf. cc. 217 and 229 § 1; cc. 20 and 404 *CCEO*.
7. Cf. c. 229 § 2; c. 404 § 2 *CCEO*.
8. Cf. cc. 783 § 3 and 816 *CCEO*.
9. Cf. c. 796 § 2; c. 631 § 1 *CCEO*.
10. Cf. J. HERVADA, *Pensamientos de un canonista en la hora presente* (Pamplona 1989), p. 124.

religious and moral education is provided to their children in accordance with the conscience of the parents. The natural rights of parents thus appear to have multiple ramifications. They should be assisted in obtaining all those applications in civil society, since they are widely recognized in the world of Catholic education. Let us not forget that c. 793 § 1 (cf. c. 627 § 1 *CCEO*) also recognizes parents' right to educate their children and to choose the most suitable institutions and means for doing so, thereby subjecting them to a reciprocal obligation.

On the borderline between the rights and obligations of parents are found the juridical norms regulating the juridical relations between parents and children. Canon 98 § 2 (cf. c. 910 § 2 *CCEO*) can be considered to be the key element, given that provisions concerning the place of origin (c. 101 § 1), the rite (c. 111 § 1; c. 29 § 1 *CCEO*), or representation of minors in court (c. 1478; c. 1136 *CCEO*) are grafted onto parental authority over children. Under this same responsibility of parents can also be found the reason for the need for their consent, so as to be able to proceed with the licit baptism of their minor children (c. 868; c. 681 *CCEO*). This same c. 98 § 2 expresses the limits of parental authority: divine law and canon law. One of the limitations expressly established by canon law is the right not to be subject to any coercion in the choice of a state in life (c. 219; *CCEO*, c. 22), clarified subsequently insofar as marriage is concerned (c. 1071 § 1,6°; c. 789,4° *CCEO*).

b) *The obligations imposed on parents regarding the education of their children*

The primordial obligation of parents "to ensure the Christian education of their children in accordance with the teaching of the Church" (c. 226 § 2 *in fine*) is recalled in various places in the Code, with varying nuances of meaning. Thus, it is recalled that, in the first place, they have the duty of forming, by word and example, their children in the faith and in the practice of a Christian life,[11] since the participation of parents in the sanctifying office is carried out in a particular way by living their conjugal life with a Christian spirit and by giving their children a Christian education (c. 835 § 4 *in fine*; cf. CCC, 902), which is nothing other than a way of emphasizing their special duty to work towards building up the people of God through marriage and the family.[12]

Within this context the obligations imposed on parents must be understood, in regard the reception of the sacraments of Christian initiation[13] on the part of their children, the formation of the children "in the true sense of penitence" (c. 1252), and even the sanction which may be imposed on parents "who hand over their children to be baptized or brought

11. Cf. c. 774 §2; c. 618 *CCEO*; also cf. *CCC*, 2225, 2226, 2685.
12. Cf. c. 226 § 1 *in fine*; c. 407 *CCEO*; cf. *CCC*, 1914.
13. Cf. cc. 867, 890, 914; c. 686 *CCEO*.

up in a non-Catholic religion" (c. 1366; cf. c. 1439 *CCEO*). Is it not logical, then, to state that the duty of favoring the priestly vocations "in particular ... binds Christian families" (c. 233 § 1; cf. c. 329 § 1 *CCEO*)?

In order that parents may exercise their rights and fulfill their obligations, c. 793 § 1 appears to be fundamental. Catholic parents have the right-duty to select the means and the institutions that will allow them to achieve the Catholic education of their children. In a logical sense, this can mean that parents are obligated to establish, found, and administer educational institutions if they are in a place where existing institutions cannot guarantee, in accord with the conscience of the parents (cf. c. 799 *in fine*), the Catholic education of their children. Properly speaking, and taking into account the effect of the codification, the provisions set forth in c. 793 should be interpreted broadly, in order to encourage parents to fulfill those obligations for which they are responsible. This does not only involve, however, educational institutions *stricto sensu*, but rather all the means or institutions which might *best* provide for the Catholic education of their children. When parents plan to implement initiatives, they should seek out the most effective juridical means: the provisions in cc. 215–216 fully recognize the right of association (which is a natural right) and the right to apostolic initiatives.[14] Certainly, they should always keep communion with the Church,[15] as well as obedience to their legitimate pastors (c. 212 § 1; c. 15 *CCEO*).

Finally, let us stress that the obligation of parents, while not exclusive, given that it also falls upon the pastors (cf. c. 794; cf. c. 628 *CCEO*), is indeed imposed upon them in a fundamental way.

3. *The obligations of pastors relative to education*

The general obligations of pastors[16] already offer Christian parents a very necessary support in order to be able to fulfill their obligations in regard to the education of their children and to the building up of the people of God. However, specific obligations are also imposed on pastors within the precise framework of the obligations of parents.

The parish priest should render personalized attention to the faithful in general, but in particular to families (cf. c. 529 § 1; c. 189 § 3 *CCEO*). He

14. Cf. L. NAVARRO, *Diritto di associazione e associazioni di fedeli* (Milan 1991), pp. 58–64; R. PAGÉ, "Associations of the Faithful in the Church," in *The Jurist* 47 (1987), pp. 165–203, especially pp. 171–172; C.J. ERRÁZURIZ, "Le iniziative apostoliche dei fedeli nell'ambito dell'educazione: profili canonistici," in *Romana* 6 (1990), pp. 279–294; idem, *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), pp. 239–270.

15. Cf. cc. 205 and 209 § 1; cc. 8 and 12 *CCEO*.

16. Cf. E. CAPARRÓS, "La rechristianisation de la société: le rôle des laïcs dans les perspective du canon 225," in *Fidelium Iura* 3 (1993), pp. 37–76, especially pp. 62–69.

should also aid and encourage the task of parental family catechesis;[17] to duly instruct the parents of a child who is to be baptized (cf. c. 851,2°); and to ensure, together with parents, that children are prepared to receive the Eucharist (cf. c. 914). The Pastors of souls also have the obligation to see to it that the necessary assistance is provided to the faithful so that their matrimonial state is maintained within a Christian spirit and that it continues to progress to perfection (c. 1063; cf. c. 783 § 1 *CCEO*); at the same time, the duty is imposed on them (recalled by c. 1128) which entails spiritual assistance given to the Catholic spouse of a mixed marriage, and also—this can be confirmed in the two provisions of the *CCEO*: cf. cc. 783 § 3 and 816—assistance in a more general sense, conducive to the unity of conjugal and family life (c. 1128 *in fine*).

Insofar as the specific means required so that parents can ensure a Catholic education for their children are concerned, since they are bound to entrust their children to schools in which a Catholic education is taught (c. 798; cf. c. 633 § 2 *CCEO*), it is necessary for the competent ecclesiastical authority to guarantee that schools of this type exist, since Catholic schools cannot exist but with their approval.[18] In addition, parents, as we have seen, can establish and organize schools; in any event, it is incumbent upon the competent ecclesiastical authority to watch over the Catholic content of instruction[19] and the appropriate conduct of educators,[20] in schools as well as universities.

17. Cf. c. 776 *in fine*; cf. c. 780; c. 624 § 1 *CCEO*.
18. Cf. c. 803; cc. 632, 635 *CCEO*.
19. Cf. cc. 804, 806; cf. cc. 633, 634, 636 § 2, 639 *CCEO*.
20. Cf. cc. 806, 810 § 1; cf. cc. 636 § 2, 639 *CCEO*.

227 **Ius est christifidelibus laicis, ut ipsis agnoscatur ea in rebus civitatis terrenae libertas, quae omnibus civibus competit; eadem tamen libertate utentes, curent ut suae actiones spiritu evangelico imbuantur, et ad doctrinam attendant ab Ecclesiae magisterio propositam, caventes tamen ne in quaestionibus opinabilibus propriam sententiam uti doctrinam Ecclesiae proponant.**

To lay members of Christ's faithful belongs the right to have acknowledged as theirs that freedom in secular affairs which is common to all citizens. In using this freedom, however, they are to ensure that their actions are permeated with the spirit of the Gospel, and they are to heed the teaching of the Church proposed by the Magisterium, but they must be on guard, in questions of opinion, against proposing their own view as the teaching of the Church.

SOURCES: *LG* 37; *AA* 24; *PO* 9; *GS* 43

CROSS REFERENCES: cc. 209 § 1, 212 § 1, 220, 221 § 1, 275, 278 § 3, 285 § 3, 287 § 2, 386, 529 § 2, 747 § 2

COMMENTARY

Ernest Caparros

1. *The principle of liberty and autonomy*

Some criticisms have been leveled at the Code because of the fact that it does not devote many canons to the laity. The content of this canon explains to a large degree the reason for the absence of norms: it does not involve a lacuna, but rather is the affirmation of a principle: that of freedom and autonomy, which should logically lead the legislator not to regulate those activities which are to be undertaken freely.

a) *Freedom in temporal matters*

Canon 227 guarantees this right of freedom and of autonomy enjoyed by the laity in secular matters. They should always exercise that freedom in a way which is fully consistent with their faith and assuming their full responsibility, without seeking to attribute what is a personal individual

opinion to the Church or its doctrine.[1] The laity should act in accord with a practical moral judgment, which would permit them to give witness unceasingly of their status as Christians. "At the same time, their actions should always respect, in each case, the ends, the laws and the means inherent to the concrete human reality within the context in which they are acting (their occupation, their family life, their apostolic activities, the economy, international relations, etc.)[2]."

Certainly it is a freedom that the laity should exercise insofar as they are Christians and within those criteria which have already become the law of the Church. The recognition of that right, both in c. 227 as well as in c. 225 § 2, at the same time constitutes a declaration of the incompetence of the Church to regulate the details regarding specific solutions in temporal matters of free opinion. Thus, in the same way that the laity, according to the provisions set forth in c. 227, cannot make use of the Church in order to entangle it in human factions, those persons invested with authority should abstain from acting in the name of the Church in matters of opinion. The Catechism of the Catholic Church reminds us, "It is not the role of the Pastors of the Church to intervene directly in the political structuring and organization of social life. This task is part of the vocation of the *lay faithful*, acting on their own initiative with their fellow citizens" (*CCC*, 2442). The Gospels and the doctrine of the Church, in particular the *corpus* of its social doctrine, constitute without a doubt reliable guidelines, but not precise answers to questions of a scientific, social, political and cultural nature, etc. The freedom of the laity in those areas is essential for their participation in the saving mission of the Church. Whenever that right to freedom of the laity in those matters is not respected, clericalism gains ground.

b) *Obstacles to freedom*

The clericalism to which we are referring can have multiple manifestations, in particular, the inability to understand that the laity can assume apostolic responsibilities without being mandated by the Hierarchy, or without necessarily inserting themselves into given pastoral structures, as the Catechism of the Catholic Church stresses: "the initiative of lay Christians is especially necessary whenever it involves discovering or inventing means to permeate the social, political, and economic realities with the demands of Christian doctrine and life."[3] That mode of understanding the

1. Cf. c. 402 *CCEO*; *GS* 43; J.T. MARTÍN DE AGAR, "El derecho de los laicos a la libertad en lo temporal," in *Ius Canonicum* 26 (1986), pp. 531–562; G. LO CASTRO, "La misión cristiana del laico," in *La misión del laico en la Iglesia y en el mundo* (Pamplona 1987), pp. 456–460.

2. J. HERRANZ, "Le statut juridique des laïcs: l'apport des documents conciliaires et du Code de droit canonique," in *Studia Canonica* 19 (1985), pp. 248–249.

3. CCC, 899; cf. J. HERRANZ, "Le statut juridique...," cit., p. 254; J. HERVADA, *Pensamientos de un canonista en la hora presente* (Pamplona 1989), p. 133–134; A. CATTANEO, *Questioni fondamentali della canonistica nel pensiero di Klaus Mörsdorf* (Pamplona 1986), pp. 263–265 and 414–420.

reality of the Church from a perspective of power, rather than of service could also be considered a sign of a certain "neo-clericalism," in such a way that the immense task of Christianizing temporal realities[4] is considered to be the "consolation prize"[5] left to the laity.

Finally, contrary to the harmony which ought to reign between the priestly ministry or hierarchy and the royal priesthood[6] and somewhat affected by Protestant influence, there is another manifestation colored by neo-clericalism, as seen in the concept of the radical equality of all members of the people of God, which dispenses with a diversity of functions and which can lead to confusion, or even abandonment, of the essential and ontological distinction between priest and laity.[7]

These different manifestations of clericalism are an attack on the legitimate freedom of the laity and constitute an abuse of clerical functions. On the other hand, the provisions set forth in cc. 275 § 2, 278 § 3, 285 § 3 and 287 § 2[8] can be considered to be juridical barriers to block those phenomena. Without a doubt, it is impossible to compartmentalize, in an absolute way, which functions belong to some members of the people of God and which to others, but despite certain inevitable pretenses, it is necessary to attempt to avoid confusion. The principle of freedom essentially leads to a significant autonomy of action for the laity, to multiple solutions, and to a great flexibility of options.

2. *Faithfulness to ecclesial communion*

Maintaining ecclesial communion[9] and obedience to the Magisterium are universal obligations.[10] This double aspect of hierarchical communion cannot be preserved unless one is *fully faithful*, in other words, if one pre-

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4. Cf. *CL* 32–44; RM 42–43, 58–59, 71–72, 82, 90–91; R. LANZETTI, "L'indole secolare propria dei fedeli laici secondo l'Esortazione Apostolica post–sinodale 'Christifideles laici'", in *Annales Theologici* 3 (1989), pp. 35–51.

5. R. JACQUES, "La compétence propre des laïcs (et religieux) à l'égard des réalités temporelles," in *Practice Juridique et Religion* 2 (1985), pp. 192–201.

6. Cf. *CL* 23; *PDV* 59 and 74; JOHN PAUL II, "Alocución a los participantes en el Simposio, organizado por la CpC, 'La participación de los laicos en el ministerio sacerdotal'," April 22, 1994, in *L'Osservatore Romano*, Weekly Edition, May 11, 1994, p. 3. (English Edition: "Participation of the Lay Faithful in the Priestly Ministry," April 22, 1994, in *L'Osservatore Romano*, Weekly Edition, May 11, 1994, p. 3.)

7. Cf. Y. CAPONY, "Le champ d'activité des laïcs ou les limites de la notion de fidèle," in *Practice Juridique et Religion* 2 (1985), pp. 185–191.

8. Cf. cc. 381 §3, 383 §1, 384 §2 *CCEO*.

9. Cf. cc. 205, 209; cc. 8 and 12 *CCEO*; *CL* 20; R.J. CASTILLO LARA, "La communion ecclésiale dans le nouveau Code de droit canonique," in *Studia Canonica* 17 (1983), pp. 331–335 and in *Comm.* 15 (1984), pp. 238–264.

10. Cf. cc. 212 §1 and 227; cc. 15 and 402 *CCEO*.

serves—as required by canon 205[11]—the bonds of the profession of faith, the sacraments and ecclesiastical governance. Thus, if the laity, when exercising their freedom within the framework of the earthly city, were to act against the threefold dimension of communion—in other words, if they were to withdraw from the faith, to abandon any of the articles of the Creed (apostasy or heresy), or if they were to withdraw from the sacraments, or, in short, if they were to break communion (schism) or to fail to obey their legitimate pastors (non-schismatic disobedience)—then they would be violating the obligation imposed on them by canon 209 § 1 (cf. *CCEO*, c. 12), thereby becoming an obstacle to the saving mission of the Church. The person acting in this manner could even—if he had committed the applicable delict—be excommunicated.[12]

Ecclesial communion in its three-fold dimension, the cornerstone for the legitimacy of that action imbued with the evangelical spirit of the laity, of which c. 227 is speaking, is also the cornerstone for the legitimate intervention of pastors. In fact, pastors must also maintain communion if they want ecclesiastical governance to be the service required for harmonizing the rights of the faithful, insofar as they are baptized and insofar as they are citizens, so that "not even in temporal affairs may any human activity be withdrawn from God's dominion" (*LG* 36; cf. *CCC*, 912). Also the same or lesser penalties can also be applied to pastors, if they should commit the delicts categorized above.

a) *Union with the head*

Union with Christ, within the visible framework of the Church, should be achieved by means of the bonds of ecclesiastical governance. We find ourselves in the face of a universal requirement, applicable to all members of the baptized (cf. cc. 205, 209). Certainly, the laity, when exercising their rights, above all those rights rooted in their *conditio libertatis*, such as actions that fall within the scope of temporal matters, should keep this aspect of the *conditio subiectionis* in mind, which is a manifestation of hierarchical communion.[13] Thus, they have a duty of communion, common to all the faithful, which is fulfilled by accepting the Pope as the head of the universal Church and the bishop as head of the diocese, or of that portion of the people of God which has been entrusted to him, respecting the threefold dimension of communion stated on c. 205.[14]

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11. Cf. cc. 751 and 1364; cc. 1436–1437 *CCEO*; J. SANCHIS, "Sulla natura e gli effetti della scomunica," in *Ius Ecclesiae* 2 (1990), pp. 633–661.

12. Cf. cc. 751 and 1364; cc. 1436–1437 *CCEO*; J. SANCHIS, "Sulla natura e gli effetti della scomunica," in *Ius Ecclesiae* 2 (1990), pp. 633–661.

13. Cf. J. HERVADA, *Elementos de Derecho constitucional canónico* (Pamplona 1987), pp. 126–129 and 143–146.

14. Cf. ibid., pp. 144–145.

b) *Obedience to the pastors*

The other dimension of *communio hierarchica* is the duty of obedience, as established under c. 212 § 1 (cf. c. 15 § 1 *CCEO*), but also recognized in regard to the Magisterium of the Church, to the extent that it lays down the guidelines of the specific action of the laity by the canon which is now the subject of our commentary.[15] This *duty* of obedience entails fulfilling the mandates established through suitable legislative means, or also by accepting teachings, taking into account the degree to which the Magisterium is mandatory. "They (the faithful) have the duty of observing the constitutions and decrees conveyed by the legitimate authority of the Church" (*CCC*, 2037). In this way, this obligation of obedience is limited by the competence of pastors.[16] The power of governance or of jurisdiction of pastors has territorial limits of competence (cf., for example, c. 30), etc., which, if exceeded, make the mandates null. This would also be true if the fundamental principles of canonical norms were not respected when exercising legislative power, such as rationality or the hierarchy of norms,[17] or which the late lamented Professor Lombardía called "legality in *legislando*,"[18] in other words, respect for formal requirements, such as, for instance, those pertaining to the promulgation of legislative provisions.[19]

It is appropriate to point out that lay people, just like all other members of the faithful, have the need to know the Magisterium of the Church, by taking into account the various degrees to which it is mandatory, so as to be able to submit to it. "The *ordinary* and universal *Magisterium* of the Pope and the bishops in communion with him teaches the faithful the truth to believe, the charity to practice, the beatitude to hope for" (*CCC*, 2034). All pastors have the obligation to transmit the contents of that Magisterium to the faithful, above all what proceeds from the supreme pastor and from the Roman dicasteries. Omission of that duty may lead to a kind of denial of justice. In fact, given that the Magisterium of the Church should serve as a guide to the laity in their autonomous tasks within the world, according to the canon which is now the subject of our commentary, if they are deprived of that Magisterium, does it not expose them to act in such a way so as to disassociate themselves from their responsibility? The Catechism of the Catholic Church reminds us: "The faithful, therefore, have the *right* to be instructed in the divine saving pre-

15. Cf. c. 747 §2; cc. 402, 595 §2 *CCEO*; CCC, 899, 909, 912, 1915, 2037, 2442.
16. Cf. J. HERVADA, *Elementos...*, cit., p. 145.
17. Cf. P. LOMBARDÍA, *Lecciones de Derecho Canónico* (Madrid 1984), pp. 150–153 and 159; idem, "Codificación y ordenamiento canónico," in *Raccolta di scritti in onore di Pio Fedele*, (Perugia 1984), pp. 178–185; J. HERRANZ, "Il principio di legalità nell'esercizio della potestà di governo," in *Studi sulla nuova legislazione della Chiesa* (Milan 1990), pp. 129–131.
18. Cf. P. LOMBARDÍA, *Lecciones...*, cit., p. 155; c. 135 §2; c. 985 §2 *CCEO*.
19. Cf. cc. 8 and 29; cc. 1488–1489 *CCEO*; J. HERRANZ, "Il principio di legalità...," cit., pp. 130–131.

cepts that purify judgment and, with grace, heal wounded human reason" (*CCC*, 2037).

It is true that it is impossible to prevent the voice of the Pope and of the Roman dicasteries from reaching the faithful, and that all can seek to obtain these documents. This is true above all for that part of the faithful that we could call "educated." But this does not diminish the right (*ius est christifidelium*, c. 213) of the all the members of the faithful to receive this teaching, nor does it change the obligation of sacred pastors to transmit its content faithfully.[20]

If we look at the other side of the coin, we ought not to forget the right, acknowledged in the laity, as it is to all the members of the faithful, to exercise their rights in court.[21] It seems clear that the greater problem in exercising this general fundamental right (that to be heard within a reasonable time limit by a competent tribunal) is that of the non-existence of ecclesiastical tribunals which exercise their jurisdiction over issues related to the rights of the faithful.

3. *Respect for diversity*

The principle of freedom and of autonomy, accorded to lay people in their task as witnesses in the earthly city, ought to lead to a healthy diversity.[22] Within this context, there are two aspects that warrant emphasis: the freedom of the laity which the pastors must respect, and the responsibility which the laity themselves should assume.

a) *Freedom*

It is interesting to note that the obligation to respect the freedom of the laity is imposed juridically on all clergy, independently of the duties which they might perform, and by means of the recognition of the mission which lay people exercise within the Church and in the world, while they are being asked, at the same time, to promote this mission.[23] *CCEO* (c. 381 § 1) goes even further: the clergy are called upon to recognize and to promote the dignity of lay people, as well as the diversity of charisms and their competence and experience on behalf of the good of the Church.

20. Cf. *LG* 25; c. 386; c. 196 *CCEO*; C.J. ERRÁZURIZ, *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), pp. 35–45.

21. Cf. c. 221; c. 24 §1 *CCEO*; E. LABANDEIRA, *Tratado de Derecho Administrativo Canónico*, 2nd ed. (Pamplona 1993); pp. 505–508; J. HERVADA, *Elementos...*, cit., pp. 148–149.

22. Cf. *CL* 15, 17, 20; R. LANZETTI, "L'indole secolare propria dei fedeli laici...," cit.

23. Cf. c. 275 §2; CCC, 899, 909, 2442; J.I. ARRIETA, "Jerarquía y laicado," in *Ius Canonicum* 26 (1986), pp. 129–136; idem, "Coordenadas fundamentales de la actuación de los fieles laicos en la sociedad temporal y en la Iglesia," in A. DE LA HERA-E. MOLANO-A. ÁLVAREZ DE MORALES (dir.), *Las relaciones entre la Iglesia y el Estado*, (Madrid-Pamplona 1989), pp. 840–845.

Both the *CIC* and the *CCEO* have adopted this obligation in the section devoted to the regulation of the obligations and rights of the clergy. The general scope of these norms leads us to apply them, following the provisions of the Vatican Council II in this regard (cf. *LG* 37; *AA* 24; *PO* 9), to bishops as well as to priests. They are norms that could constitute an antidote to the forms of improper intrusion into those matters which fall, by their nature, within the scope of freedom of the laity.

On the other hand, the Code presents to the parish priest (in c. 529 § 2) a vast sphere of action in which to respect the freedom of the laity. It begins by enunciating a general provision: to recognize and sustain the share inherent to lay people in the mission of the Church. That inherent share is found to be widely circumscribed by cc. 225 and 227 to the earthly city, to all those realities to which only lay people can bring the witness of Christ and of the Gospels. It is from this perspective that the Catechism of the Catholic Church encourages all its citizens to take an active role in public life (cf. *CCC*, 1915), and it places the participation of everyone in seeking the common good, as with all ethical duties, under the aegis of an ever-renewing conversion (cf. *CCC*, 1916), by stressing that "work can be a means of sanctification and a way of animating earthly realities with the Spirit of Christ" (*CCC*, 2427).

Pastors thus have the obligation not only to respect, but also to promote, this freedom that belongs to the laity in the sanctifying action of the world. In all other respects, it seems clear that we have a juridical obligation that is demanded. Freedom of action on the part of the laity will necessarily lead to variety, and it is precisely this richness of diversity that will be allowed to reach so many people who do not benefit from a pastoral organization. What is involved, in effect, is the attempt to encourage and to develop "the vital theological process which the laity follow toward full assumption of their ecclesial responsibilities, towards their special mode of participating in the mission of Christ and of his Church."[24]

Certainly, pastors should guide the apostolate of the laity, by fulfilling their obligation to instruct them in the faith and to transmit the Magisterium of the Church, but their role is not in any way to limit the free initiatives of the laity, much less to make use of them as *longa manus* of the Hierarchy. On the contrary, what is involved is an attempt to promote "this initiative of lay Christians" (*CCC*, 899), which, as Pius XII recalled, "is placed at the most advanced forefront in the life of the Church,"[25] so that the Church will become, through them, the vital principle of society. "This initiative is a normal element of the life of the Church" (*CCC*, 899).

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24. J. ESCRIVÁ, in *Conversations with Monsignor Escriva de Balaguer*, 2nd ed. (Shannon: Ecclesia Press, 1972), no. 20; cf. L.F. NAVARRO, "El laico y los principios de igualdad y variedad," in *Ius Canonicum* 26 (1986), pp. 93–112.

25. PIUS XII, *Discurso a los nuevos cardenales*, February 20, 1946, in *AAS* 38 (1946), p. 149: cited in *CL* 9 and in *CCC*, 899.

In effect, it is incumbent on the laity to contribute "so as to remedy the institutions and conditions of the world ... when the latter are an inducement to sin that these may be conformed to the norms of justice, favoring rather than hindering the practice of virtue ... By so doing, they will impregnate culture and human works with a moral value" (*LG* 35; *CCC*, 909).

In this way, then, not only should freedom be respected, but responsibility should also be supported, maintained, and awakened.

b) *Responsibility*

Let us not overlook that a significant part of the responsibility of the laity in the exercise of their free and autonomous action should manifest itself in the constant effort to live communion with great faithfulness (see above, no. 2). But the Code also places the rights of all the faithful under the aegis of the search for the common good.

Thus, the faithful should, when exercising their rights, take into account the common good of the Church, the rights of others, and the duties that they have towards others.[26] Ecclesiastical authority should also consider the common good as an instrument used to measure the regulation imposed on the exercise of the rights inherent to the faithful (cf. cc. 223 § 2; c. 26 § 2 *CCEO*). On the other hand, *ex nature rei*, the rights of others should also be respected by the ecclesiastical authority in the same way that the latter should consider its rights towards others when it is engaged in regulating the exercise of the rights of the faithful.

As it happens under all circumstances, freedom cannot be separated from responsibility. Thus, the laity, in their *free and responsible activities in the temporal order*, "are to be guided by a Christian conscience, since not even in temporal affairs may any human activity be withdrawn from God's dominion" (*LG* 36; cf. *CS* 43). When exercising this freedom, they should also keep the evangelical spirit and the doctrine of the Magisterium of the Church present, and should take great care not to present their own personal opinions as the doctrine of the Church (cf. c. 227; c. 402 *CCEO*). This means that, in practice, the laity may not introduce a rift between their own Christian life and their professional life, social life, family life, etc.

As John Paul II recalls, "[t]he unity of life of the lay faithful is of utmost importance: they should, in effect, sanctify themselves in ordinary, professional and social life. In order that they may respond to their vocation, the lay faithful must consider their daily life as an occasion for union with God and for fulfilling His will, as well as for service towards others, by bringing them communion with God in Christ."[27]

26. Cf. c. 223 §1; *CCEO*, c. 26 §1; J.I. ARRIETA, "Jerarquía y laicado," cit.
27. *CL* 17; cf. 34 and *passim*; J. ESCRIVÁ, "Passionately loving the world," in *Conversations...*, cit., no. 114; R. LANZETTI, "L'unità di vita dei fedeli laici nell'Esortazione Apostolica 'Christifideles laici'," in *Romana* 5 (1989), pp. 300–312.

The duty of the apostolate, intimately tied to the universal call to sanctity, leads toward that unity of life that makes the laity a witness of Christ in temporal realities. Their freedom of earthly actions must always be guaranteed, but their responsibility as Christians, their obligation to sanctify the world, runs parallel to that freedom.

228 **§ 1. Laici qui idonei reperiantur, sunt habiles ut a sacris Pastoribus ad illa officia ecclesiastica et munera assumantur, quibus ipsi secundum iuris praescripta fungi valent.**

§ 2. Laici debita scientia, prudentia et honestate praestantes, habiles sunt tamquam periti aut consiliarii, etiam in consiliis ad normam iuris, ad Ecclesiae Pastoribus adiutorium praebendum.

§ 1. Lay people who are found to be suitable are capable of being admitted by the sacred Pastors to those ecclesiastical offices and functions which, in accordance with the provisions of law, they can discharge.

§ 2. Lay people who are outstanding in the requisite knowledge, prudence and integrity are capable of being experts or advisors, even in councils in accordance with the law, in order to provide assistance to the Pastors of the Church.

SOURCES: § 1: *LG* 33; *CD* 10; *AA* 24
§ 2: *LG* 33, 37; *CD* 27; *AA* 20, 26; *AG* 30; *PO* 17

CROSS REFERENCES: cc. 129 § 2, 149, 150, 230 § 3, 231 § 2, 463 § 1, 6° et § 2, 471, 482, 483, 492, 494, 512, 517 § 2, 536, 537, 776, 785, 1278, 1282–1284, 1421 §§ 2–3, 1424, 1428, 1435

COMMENTARY

Ernest Caparros

1. *Individual cooperation of the laity in the "munus regendi"*

Paragraph 1 establishes that the laity who are found to be suitable are capable (*sunt habiles)* of being admitted to ecclesiastical offices and functions. Paragraph 2 also contemplates the capability of the laity (*habiles sunt*) to act as experts or advisors of the pastors of the Church, by taking into account their knowledge, prudence, and integrity, and provided, of course, "*ad normam iuris*." The principle, therefore, appears to be stated with clarity: by adopting ideas already put forth by Vatican

Council II, the canonical system recognizes that the laity may be able to possess that capability.[1]

This does not involve a right that belongs to them, but more specifically, a capability (*habiles sunt*) which a suited and competent layperson possesses within a given field. We do not find ourselves before a general right or a duty, but rather, before a situation that concerns a small number of the laity and which, in a certain sense, even demands that those lay people bring disruption upon themselves: "to exercise, insofar as they are a member of the laity, an office tied to the Church—affirmed John Paul II—frequently implies a profession of faith toward it which enters into conflict with the habits of daily life; it becomes necessary to harmonize the demands of religious office, those of family life, and those of private life."[2] And that has led the Pope to express, within that same context, his profound gratitude on behalf of the entire Church and to convey his paternal encouragement to those members of the laity who cooperate in ecclesiastical functions.

Canon law recognizes in principle, therefore, the capability of the laity to cooperate in the three functions constituting the essence of the episcopal ministry.[3] It also provides for specific aspects, offices or functions that the bishop may entrust to the laity. On the other hand, even being aware that the distinction among the threefold *munera* does not permit an absolute separation, due to their close interrelationship,[4] it seems to us that the canon upon which we are now commenting primarily deals with the exercise of the *munus regendi*.

2. *The principle of cooperation of the laity in the exercise of the "munus regendi"*

While the *CIC*/1917 did not allow anyone to exercise the *potestas iurisdictionis* other than clerics (cf. c. 118)—even though examples of *potestas iuridictionis* can be found in the history of the Church exercised

1. Cf. *LG* 33; *AA* 10, 20, 22, 24; cc. 129 § 2, 149, 150; cc. 408, 940 §1, 979 §2 *CCEO*; A. DEL PORTILLO, *Fieles y laicos en la Iglesia* (French translation: *Fidèles et laïcs dans l'Église*, Paris 1980; English translation: *Faithful and laity in the Church*, Shannon 1976), 3rd ed. (Pamplona 1991), pp. 225–236.

2. JOHN PAUL II, "Discurso a los laicos dedicados al servicio de la Iglesia," Fulda, November 18, 1980, no. 1, in *L'Osservatore Romano*, French ed. December 9, 1980, p. 6, col. 3. (English Edition: "To Laity in the Service of the Church," Fulda, November 18, 1980, in *L'Osservatore Romano*, December 15, 1980, p. 7.)

3. Cf. *CCC*, 897–913; A. DEL PORTILLO, "El Obispo diocesano y la vocación de los laicos," in PH. DELHAYE-L. ELDERS (dir.), *Episcopale munus. Recueil d'études sur le ministère épiscopal offertes en hommage à S.E. Mgr. J. Gijsen*, (Van Gorcum 1982), p. 199.

4. Cf. JOHN PAUL II, Litt. *Novo incipiente*, April 8, 1989, no. 3, in *AAS* 71 (1979), pp. 396–398.

by people who had not received sacred orders[5]—primarily the Council (*LG* 33), and later post-conciliar legislation,[6] and finally the Code (cf. cc. 129 § 2 and 149–150; cc. 940 § 1, 999 § 2 *CCEO*), have come to consider the *munus regendi* as a function whose exercise may belong, depending on the modes of action specifically regulated, to the lay members of the people of God.

Before 1983, canonical doctrine fully discussed the question as to whether or not the *potestas regiminis* was strictly bound to the *potestas sacra*.[7] The Code offers a highly nuanced juridical response to this question. The *munus regendi* of the pastor of a local Church is bound by the sacrament of orders in its highest degree, the episcopate.[8] The offices that involve the *plena animarum cura* demand the order of presbyterate, for which reason the cleric who is not a presbyter cannot hold them.[9] Thus, the requirement of the presbyterate or of the episcopate prescribed in the canonical tributes of those clarifications that may be needed in. 129 § 1: in the first place, the capability of the clergy (*habiles sunt*) to exercise ecclesiastical offices is not absolute; on the other hand, c. 129 § 1 indicates that such a capability is dependent upon the conditions established by law.

Furthermore § 2 of that same c. 129 provides that all the lay faithful *cooperari possunt* in the exercise of the power of governance, also according to the prescriptions of law. Evidently, when the Code demands *potestas sacra* in order to exercise an office, the laity are logically excluded. In all other respects, the Code demands in a general way that, in order to be promoted to an office, the candidate be suitable[10] and that he be in communion with the Church (cf. c. 149 § 1). Thus, the joint reading of canons 129 § 2 and 149 § 1 leads us to state that the sacramental *munera*, received in the sacrament of baptism, can allow the laity to exercise ecclesiastical offices and to participate in this way in the exercise of the *munus regendi*. But it is also always necessary to respect the hierarchical constitution of the Church, which does not allow the laity to assume the faculty of control or of intrusion into the missions inherent to the hierarchy.[11]

5. For example, cf. J. ESCRIVÁ, *La Abadesa de Las Huelgas*, 2nd ed. (Madrid 1974).
6. Cf. *CMat* V § 1; CH. LEFEBVRE, "Le motu proprio 'Causas matrimoniales'," in *Studia Canonica* 5 (1971), pp. 213–223, especially pp. 218–221.
7. E. CORECCO-N. HERZOG-A. SCOLA (eds.), *Les droits fondamentaux du chrétien dans l'Église et dans las société*, (Fribourg/Freiburg i. Br./Milan 1981), pp. 181–361.
8. Cf. cc. 382 § 2 and 379; cc. 187–188 *CCEO*; *CD* 3.
9. Cf. cc. 150, 521 § 1 and 546; c. 281 *CCEO*; *CD* 30.
10. Cf. c. 149 § 1; c. 940 *CCEO*; *LG* 33.
11. Cf. A. DEL PORTILLO, *Fieles y laicos...*, cit., p. 226; A. CARTER, "Bishop-Priest-Laity Relationship in the Light of Vatican II," in *Studia Canonica* 1 (1967), p. 92 and in *The Jurist* 27 (1967), p. 159.

3. Applications of the principle

In the Code, multiple cases are contemplated which provide for the possibility that the laity be called upon to cooperate with the diocesan bishop in the exercise of his *munus regendi*. They may be grouped into two categories: participation in collegial entities and the exercise of offices. However, it is possible that participation in collegial entities may not be related *stricto sensu* with *munus regendi*.

a) *Participation of the laity in collegial entities*

Within the scope of the diocese, the Code demands that the laity form part of the diocesan synod[12] and the pastoral council (cf. c. 512; c. 273 *CCEO*). Furthermore, it not only becomes possible, but even fairly probable, that there are lay people who form part of the diocesan council of economic affairs, which, on the other hand, is not an activity inherent to the power of governance.[13] In the first two cases, the Code demands the presence of lay people in those entities in order to ensure that the voices of that component of the people of God entrusted to the bishop be heard, but without attempting *to represent* the laity, except in those cases which provide for an election in order to guarantee representation.[14] In the latter case, on the contrary, the presence of the laity would be the consequence of their competence in economic matters and in state law, with the reservation of the absence of a relationship to the bishop (cf. c. 492 §§ 1 and 3).

Within the scope of the parish, lay people should normally form part of the pastoral council, wherever it may exist. However, the Code does not specify the criteria for selecting or electing them to such councils, leaving the specific details regarding the composition of that council, as well as the election of its members, to diocesan legislative norms.[15] Furthermore, the council of economic affairs may be composed of lay people (cf. c. 537; c. 295 *CCEO*). Participation in that council, whose existence is mandatory, should be normally based on the professional competence of its members.

Finally, in an exceptional way, whenever the scarcity of priests may require so it, the bishop of the diocese may entrust assignments of the pastoral care of a parish to people who do not have the priestly character, even though that participation should always be carried out under the direction of a presbyter.[16]

12. Cf. c. 463 § 1, 5° and § 2; c. 238 §1, 10° and § 2 *CCEO*; *DPMB*, 163.
13. Cf. cc. 492, 1277, 1282, 1283; cc. 263, 1025, 1026 *CCEO*; *PO* 17; A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 227–233.
14. A. DEL PORTILLO, *Fieles y laicos...*, cit., pp. 225–227.
15. Cf. c. 536; c. 295 *CCEO*; *SDO* 24; *DPMB* 179.
16. Cf. cc. 230 § 3, 517 § 2; *CD* 30; *AA* 10.Cf. cc. 482, 483; *CD* 37, *DPMB* 200; however, cf. c. 252 *CCEO*.

b) *The exercise of ecclesiastical offices on the part of the laity*

The Code has opened the possibility in this area for any persons to exercise offices in the diocesan curia and has incorporated those functions that they may perform in the tribunals. In fact, it is no longer required that the chancellor, the vice-chancellor and the notaries be clerics,[17] even though the Code demands the priestly character for notaries acting in proceedings in which the good reputation of a priest is in dispute.[18] This last requirement does not seem to raise any problem, since the same c. 483 § 1 provides that notaries *ad casum* may be appointed. Furthermore, the Code imposes the appointment of a diocesan financial administrator who, in addition to his integrity, must be a true expert in the subject.[19] This involves a matter, then, of selecting the most suitable persons, whether cleric or lay, by taking into account that they should be subject to the requirements of cc. 1282 and 1283 (cf. cc. 1025 and 1026 *CCEO*).

In the ecclesiastical tribunals, the laity may exercise other functions, in addition to those already provided for in the Motu proprio *Causas matrimoniales* (cf. arts. V–VII). They may always, whenever the Bishops' Conference so permits it (numerous Conferences that stretch to more than thirty countries, have issued decrees on this matter),[20] be one of the judges in a collegial tribunal.[21] In addition, as has been stated above, a layperson may be appointed auditor judge (cf. c. 1438 §§ 1–2), an advisor to a single judge.[22] Those who perform the functions of defender of the bond and promoter of justice (cf. c. 1435; c. 1099 *CCEO*) may also be laypersons. The fundamental change introduced by the Code in this area, apart from the offices just mentioned, resides in the fact that all those functions may be performed by male or female members of the laity.[23] Certainly, in each of the cases, the person involved should possess the necessary competence in canon law, in addition to the necessary human qualities.[24] Finally, it should be emphasized that those members of the laity who occupy

17. Cf. cc. 230 § 3, 517 § 2; *CD* 30; *AA* 10.
18. Cf. c. 483 § 2 *in fine*; c. 253 § 2 *CCEO*.
19. Cf. c. 483 § 2 *in fine*; c. 253 § 2 *CCEO*.
20. Cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze episcopali complementare al C.I.C.* (Milan 1990), which concerns the following countries: Argentina, Austria, Belgium, Bolivia, Canada, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, England, Gambia, Germany (the part included in the territory of the Conference of Berlin) India, Ireland, Italy, Liberia, Malta, Mexico, Nigeria, Panama, Peru, Philippines, Portugal, Scandinavia (the countries under the jurisdiction of the Conference of that name), Sierra Leon, Switzerland, and Yugoslavia. (Editor's Note: For complementary norms promulgated by English language Conferences of Bishops, see Volume V, Appendix 3.)
21. Cf. c. 1421 §2; c. 1087 §2 *CCEO*; *CMat* V § 1.
22. Cf. c. 1424; c. 1089 *CCEO*; *CMat* V § 2 and VI.
23. Cf. *Comm.* 10 (1978), p. 233.
24. Canon 1421 § 3 speaks of *integra fama* (cf. c. 1087 §3 *CCEO*); c. 1424 on *probata vita* (cf. c. 1089 *CCEO*); c. 1428 §2, on *bonis moribus, prudentia et doctrina* (cf. c. 1093 §2 *CCEO*); and c. 1435, on *prudentia et iustitiae zelo probati* (cf. c. 1099 §2 *CCEO*); cf. c. 471; c. 244 §2 *CCEO*.

ecclesiastical offices have the right to sufficient remuneration, and this remuneration should also consider the family needs of that employee. In addition, they have the right to the customary social-welfare benefits (social security, medical insurance, etc.: cf. c. 231 § 2; c. 409 § 2 *CCEO*).

The new regulation reveals a desire to entrust to lay people, to the extent possible, functions which do not require the *potestas sacra*. Thus, the Code specifies the *canonical missions* which are independent of the *potestas sacra* and which may, therefore, be entrusted to the faithful, whether cleric or layperson, who are suited to exercise a public function on behalf of the Church. This may have a doubly beneficial effect: on the one hand, clerics, and above all, priests, may devote themselves fully to the exercise of those functions that are exclusively theirs; on the other, the professional competence of those chosen lay people will help to shed a different light on the exercise of ecclesial functions.[25]

25. Cf. CL, nos. 21–23; EdM, arts. 4 and 5.

229 § 1. **Laici, ut secundum doctrinam christianam vivere valeant, eandemque et ipsi enuntiare atque, si opus sit, defendere possint, utque in apostolatu exercendo partem suam habere queant, obligatione tenentur et iure gaudent acquirendi eiusdem doctrinae cognitionem, propriae uniuscuiusque capacitati et condicioni aptatam.**

§ 2. **Iure quoque gaudent pleniorem illam in scientiis sacris acquirendi cognitionem, quae in ecclesiasticis universitatibus facultatibusve aut in institutis scientiarium religiosarum traduntur, ibidem lectiones frequentando et gradus academicosconsequendo.**

§ 3. **Item, servatis praescriptis quoad idoneitatem requisitam statutis, habiles sunt ad mandatum docendi scientias sacras a legitima auctoritate ecclesiastica recipiendum.**

§ 1. Lay people have the duty and the right to acquire the knowledge of Christian teaching which is appropriate to each one's capacity and condition, so that they may be able to live according to this teaching, to proclaim it and if necessary to defend it, and may be capable of playing their part in the exercise of the apostolate.

§ 2. They also have the right to acquire that fuller knowledge of the sacred sciences which is taught in ecclesiastical universities or faculties or in institutes of religious sciences, attending lectures there and acquiring academic degrees.

§ 3. Likewise, assuming that the provisions concerning the requisite suitability have been observed, they are capable of receiving from the lawful ecclesiastical authority a mandate to teach the sacred sciences.

SOURCES: § 1: *LG* 35; *DH* 14; *AA* 29; *AG* 26; *GS* 43
§ 2: *GE* 10; *GS* 62; *SapChr* 31
§ 3: *AG* 41; *GS* 63; *SapChr* 22

CROSS REFERENCES: cc. 213, 217, 218, 221, 223, 253, 386, 528, 756, 762, 773, 776, 780, 796, 804, 806, 810–812, 818, 821, 823

COMMENTARY

Ernest Caparros

This canon recognizes, first and foremost (§ 1) the duty-right of lay people which allows them to acquire the doctrinal formation needed to be able to live their Christian vocation fully. Moreover, it goes beyond the minimal level, as it also recognizes that this right can demand that lay people be allowed access to higher levels of education in the sacred sciences (§ 2).

A consequence of this duty-right is that it acknowledges the fundamental right of the laity (§ 3) to be able to teach the sacred sciences, once they have acquired the necessary formation needed to do so.

1. *The right to doctrinal formation*[1]

The vocation to holiness and the apostolate impose on the laity the duty to acquire the pertinent formation, since, without it, they would not be able to persevere in their efforts to seek holiness or to exercise the apostolate. At least within the human dimension, the obligation to acquire formation is imposed on the laity with the same force as those obligations concerning holiness and the apostolate. This constitutes, then, a moral duty.

However, juridically speaking, we find ourselves facing a fundamental right of the faithful, given that § 1 of this canon does nothing more than specifically apply the norm stated in c. 217. It entails, properly speaking, a right, since formation is transmitted to us. In this way, then, a moral duty is transformed into something that is due to the faithful. They are owed formation. This debt falls upon those persons who have formational functions within the Church: above all, parents, the first educators in the faith (see commentary on c. 226); but also school and other educational institutions[2] and the various levels of ecclesiastical organizations. Especially for the pastors,[3] whose mission is to teach the truths of faith, to guide and to provide formation for the Christian people, it is not only a moral duty, by virtue of their mission received, but also a duty of justice, whose creditor is the faithful. Herein lies the meaning of formation as a fundamental right.

1. Cf. J. HERVADA, "Misión laical y formación," in *Vetera et Nova* II (Pamplona 1991), pp. 1291–1295.
2. Cf. cc. 804, 806, 810, 821; cc. 636, 638 *CCEO*.
3. Cf. cc. 213, 386, 528, 756, 762, 773, 776, 780, 796; cc. 16, 196, 289, 608, 617, 623, 624, 631 *CCEO*.

A moral duty, in other words, the obligation of the laity to receive formation, cannot be demanded in a general sense, properly speaking, even though it may be demanded under certain circumstances, if a specific competence is required in order to exercise a function (cf., e.g., c. 231 § 1), or whenever more thorough knowledge is required before receiving a sacrament (cf., e.g., c. 1063,2°). If this moral duty is not transformed into a juridical duty in a general sense, it is because it involves a duty linked to the individual response to the call to holiness and the apostolate. This response is neither uniform nor univocal, given that it falls within the autonomy of the faithful. Even when the right imposes an obligation to acquire formation, it is necessary to respect the freedom of choice and the means needed to acquire it.

On the other hand § 2 in this canon adopts a right which *ex natura rei* which may not have been necessary to explicate. It seems evident that if the laity have the moral duty to acquire formation "appropriate to each one's capacity and condition" (§ 1 *in fine*) (and, therefore, in accordance with the free, responsible and personal response to their vocation), it becomes juridically impossible to bar them from higher studies in the sacred sciences.

2. *The right to teach the sacred sciences*

Parallel to the right of lay people to acquire deeper knowledge in the sacred sciences,[4] § 3 in this canon establishes the capability of those lay people *to teach those sciences* and to receive a mandate from the ecclesiastical authority for that purpose. Even though § 3 uses the expression "habiles sunt," it must be stressed that, insofar as the teaching of the sacred sciences is concerned, it involves a fundamental right of lay people who have competence in those subjects. The *missio canonica* is not required except when lay people teach subjects related to the faith or norms in ecclesiastical schools, since in those cases they do not teach on their own authority, but in the name of the Church.[5] In fact, lay people had already been recognized as possessing the right to acquire the necessary knowledge and to teach the sacred sciences prior to Vatican Council II. The Council, and later the Code, have done nothing more than reaffirm that right and to ground it even more firmly, without this being considered an issue acceded to the laity, but rather, recognition of a right inherent to them. In practice many changes have occurred, and we have moved from

4. Cf. C.J. ERRÁZURIZ, *Il 'munus docendi Ecclesiae': diritti e doveri dei fedeli* (Milan 1991), pp. 166–173.

5. Cf. *SapChr*, 27 §1; A. DEL PORTILLO, *Fieles y laicos en la Iglesia* (French trans.: *Fidèles et laïcs dans l'Église*, Paris 1980; English translation: *Faithful and laity in the Church*, Shannon 1976), 3rd ed. (Pamplona 1991), pp. 237–248; C.J. ERRÁZURIZ, *Il 'munus docendi...*, cit., pp. 223–239.

courses for lay people, which were more or less informational, to the complete integration of lay people into programs and the teaching faculty devoted to the sacred sciences.

However, the participation of the laity in the *munus docendi* does not take place *stricto sensu* other than when they teach in the name of the Church by virtue of a *missio canonica*. In all other cases, it does not involve cooperation in the hierarchical apostolate. But it should not be thought that these are the only roles which the laity can perform in the great evangelizing mission of the Church. "Basically it is only a question of understanding the Church, of realizing that the Church is not composed only of clerics and religious, but that the laity also, men and women, are people of God, and have by divine law a mission and responsibility of their own."[6]

In order for them to fulfill those appropriate duties it is necessary that the bishop exercise his *munus docendi* in a sustained way,[7] by offering lay people all the elements needed to acquire a solid Christian formation.

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6. J. ESCRIVÁ, in *Conversations with Monsignor Escriva de Balaguer* (Shannon: Ecclesia Press, 1972), no. 14.

7. For example, cf. cc. 756 § 2, 762, 768, 773, 780; *LG* 25; *CD* 12–14; *AA* 28–32; A. DEL PORTILLO, "El Obispo diocesano y la vocación de los laicos," in PH. DELHAYE-L. ELDERS (dir.), *Episcopale munus. Recueil d'études sur le ministère épiscopal offertes en hommage à S.E. Mgr. J. Gijsen* (Van Gorcum 1982), pp. 129–201.

230 **§ 1. Viri laici, qui aetate dotibusque pollent Episcoporum conferentiae decreto statutis, per ritum liturgicum praescriptum ad ministeria lectoris et acolythi stabiliter assumi possunt; quae tamen ministeriorum collatio eisdem ius non confert ad sustentationem remunerationemve ab Ecclesia praestandam.**

§ 2. Laici ex temporanea deputatione in actionibusliturgicis munus lectoris implere possunt; item omnes laici muneribus commentatoris, cantoris aliisve ad normam iuris fungi possunt.

§ 3. Ubi Ecclesiae necessitas id suadeat, deficientibus ministris, possunt etiam laici, etsi non sint lectores vel acolythi, quaedam eorundem officia supplere, videlicet ministerium verbi exercere, precibus liturgicis praeesse, baptismum conferre atque sacram Communionem distribuere, iuxta iuris praescriptas.

§ 1. Lay men whose age and talents meet the requirements prescribed by decree of the Bishops' Conference, can be given the stable ministry of lector and of acolyte, through the prescribed liturgical rite. This conferral of ministry does not, however, give them a right to sustenance or remuneration from the Church.

§ 2. Lay people can receive a temporary assignment to the role of lector in liturgical actions. Likewise, all lay people can exercise the roles of commentator, cantor or other such, in accordance with the law.

§ 3. Where the needs of the Church require and ministers are not available, lay people, even though they are not lectors or acolytes, can supply certain of their functions, that is, exercise the ministry of the word, preside over liturgical prayers, confer baptism and distribute holy communion, in accordance with the provisions of the law.

SOURCES: § 1: *MQ* III, VII, XII
§ 2: *MQ* V
§ 3: *IOe* 37; *AA* 24; SCDS Instr. *Fidei custos*, 30 apr. 1969; *SCCong* Resp., 20 nov. 1973

CROSS REFERENCES: cc. 517 § 2, 759, 766, 861 § 2, 907, 910 § 2, 943, 1112, 1168

COMMENTARY

Ernest Caparros

1. *The cooperation of the laity in the "munus sanctificandi"*

In this area, the cooperation of the laity *normally* consists of exercising a suppletory function for clerics. In fact, ordinary ministers of the sacraments, with an exception made for marriage in the Latin Church, are always clerics, and generally clerics should be responsible for worship. The introductory pages and the section "Theological principles" of the EdM Interdicasterial Instruction provide a summary of the basic principles. However, Vatican Council II provided (cf. *LG* 35; *SC* 35) that, in extraordinary situations prompted by the lack of clerics, or whenever the latter were prevented from exercising their ministry, they could be replaced by lay people who had received their mission from the competent authority, but only for those functions which are not essentially linked to the *potestas sacra*. In addition, after the reform of orders introduced by Paul VI with the Motu proprio *Ministeria quaedam*, male lay people can receive the conferral of the ministries of lector and acolyte. These ancient minor orders, transformed into ministries, have been excluded as such, therefore, from the scope of the priesthood, in order to become ministries exercised by the laity, who, in those cases and from a strictly juridical point of view, do not fulfill a suppletory role. On the other hand, the former Code already allowed lay people to be extraordinary ministers of baptism (cf. 742–743 *CIC*/1917) and to assist at marriage in the capacity of qualified witness (cf. c. 1098 *CIC*/1917), in the absence of priests or other clerics. Thus, if we limit ourselves to the suppletory principle, and, except for those cases involving ministries of lector and of acolyte, it must be said that the new Code has fully upheld it, and even widened its scope of application to other situations.[1]

Lay people who cooperate in the *munus sanctificandi* can be divided into three groups: *a)* those who receive a stable ministry; *b)* those who, when exercising a role as substitute, are called to fulfill certain functions on a temporary basis, and *c)* those who can replace clerics in the event of need.

a) Only men can receive conferral of the *stable ministries* of lector and of acolye (cf. c. 230 § 1). These functions, formerly included among the four minor orders (cf. c. 949 *CIC*/1917), have been formally excluded from the sacred orders (cf. 1009 § 1; c. 325 *CCEO*) and preserved only as

1. Cf. cc. 517 § 2, 861, § 2, 910 § 2, 943, 1112, 1168; cc. 677 § 2, 709 § 2 *CCEO*.

ministries.[2] Thus, the lector will assume his function, above all, in the celebration of the liturgy of the Word (cf. *SC* 35). For his part, the acolyte, in addition to his own duties, is mentioned as a extraordinary minister of Holy Communion (cf. c. 910 § 2; c. 709 § 2 *CCEO*) and of the exposition of the Most Blessed Sacrament (cf. c. 943)—but without the blessing. These latter two functions can also be assumed by other lay people, whether men or women, who are occasionally called upon to do so. The fundamental difference is that the acolyte can render those services in a stable manner because of the ministry he has received.

We should stress that the Code takes the time to specify that conferral of the ministry does not confer upon the male laity who receive it, the right to sustenance or remuneration from the Church (c. 230 § 1 *in fine*). If the stable ministries do not grant that right, it can be stated, *a fortiori*, that neither temporary nor supplitory functions, in the event of need, grant a right to any remuneration whatsoever. The situation would be different, however, if any of those persons would find themselves in a professional and hierarchical relationship of c. 231.

b) Canon 230 § 2 provides that lay people—men or women—can fulfill *temporary functions* in liturgical ceremonies (*"ex temporanea deputatione"*), such as those of lector, commentator, cantor, as well as other functions which should be *eiusdem generis*. This provision seems to contemplate functions in liturgical ceremonies which may be entrusted in a regular manner to lay people, without any special need. An authentic interpretation of this paragraph[3] establishes that among those temporary functions altar service can be included, always in accord with those decisions which, for local reasons, bishops may adopt, and accompanied by the appropriate catechesis and appropriate explanations.

c) Paragraph 3 of c. 230 contemplates a *substitution* by the laity *in cases of need*, in other words, "where the needs of the Church require and ministers are not available." In those cases, lay people can be called to exercise the ministry of the Word, to preside over liturgical prayer, to administer baptism, and to distribute Holy Communion, "in accordance with the provisions of the law." Naturally, these wider functions that can be entrusted to lay people are imposed out of the needs of the Church and due to a shortage of ordinary ministers. Lay people cannot take upon themselves that suppletory function *motu proprio*.

The Instruction EdM establishes in detail the criteria governing the performance of certain liturgical functions by the laity, and which of those functions must be reserved for the sacred ministers.[4]

2. Cf. *MQ*; R. PAGÉ, "Diaconat permanent ou nouveaux ministères?," in *Studia Canonica* 12 (1978), pp. 295–314.
3. Cf. PCILT, Resp. July 11, 1992, with complementary instructions in *AAS* 86 (1994), pp 541–542.
4. Cf. EdM, especially arts. 2, 3, 6, 9, and 12.

2. *Specific areas for the suppletory function of the laity*

a) Administration of Baptism

Insofar as baptism is concerned, the Code recognizes that a catechist can lawfully administer this sacrament if the ordinary minister is absent or impeded (cf. c. 861 § 2). We can deduce from the *missio* which the local ordinary confers upon the catechist also includes the administration of baptism. On the other hand, that same ordinary can also assign that function to other people who, in those cases, can administer this sacrament in an equally licit way (cf. c. 861 § 2; c. 677 *CCEO*).[5] In short, given that baptism is necessary for salvation, that same c. 861 recognizes that, in cases of necessity, anyone, even a non-Christian, may administer it, provided that they have the required intention. Due to the necessity for baptism, and even though the *missio* is provided for in that canon, its administration can be done in cases of necessity without a more specific mission than the one received from Christ (cf. Mt 28:19; Mk 16:15–16).

b) *Distribution of Holy Communion*

For distribution of the Eucharist, the Code provides for the possibility of appointing, in addition to the acolyte, another extraordinary lay minister, "ad norman canon 230 § 3" (c. 910; c. 709 § 2 *CCEO*). This appointment could be made by the local ordinary, or by those to whom he had delegated that power. The extraordinary lay minister could be appointed *ad casum*, *ad tempus* or even in a stable manner, but need should always subsist, consistent with c. 230 § 3. This need can arise whenever clerics or acolytes do not exist, or whenever the latter are unable to distribute Communion, or also whenever the number of the faithful is such that Mass, or the distribution of Communion *extra missam*, would be excessively prolonged.[6] The PCILT has specified that lay people cannot be delegated ministers nor exercise their suppletory function if ordinary, non-impeded ministers are present, even if they do not participate in the Eucharistic celebration.[7] This does not involve, then, a suppletory role for the greater ease of the ordinary ministers, but rather, out of a true need dictated for the good of the faithful.[8] These extraordinary ministers of Holy Communion may also be ministers of the exposition of the Most Blessed Sacrament, but without the blessing, in the Latin Church and under special circumstances. The local ordinary can also designate another person for that function (cf. c. 943).

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5. Cf. the criteria established in EdM, art. 11.
6. Cf. Instr. *IC* and A. MARZOA'S commentary on c. 910, in *Pamplona Com.*
7. PCILT, *Reply*, September 23, 1988, in *AAS* 80 (1988), p. 1373.
8. EdM. art. 8, notes the applicable discipline and expressly calls for a stop to some abusive practices, such as habitual recourse to extraordinary ministers when there are no reasons justifying their use.

c) *Assisting at marriage ceremonies*

Lay people may also, in the Latin Church, be delegated by the diocesan bishop to assist at marriages. This delegation of authority, however, is subject to fairly strict conditions.[9] Thus, in addition to a shortage of presbyters or deacons, the favorable vote of the Bishops' Conference and authorization from the Holy See are required (cf. c. 1112). The Code has integrated here a practice that had already been approved for certain dioceses, under the conditions specified in the canon.[10]

d) *Laity as ministers of certain sacramentals*

Finally, laity can, in certain cases, be ministers of sacramentals (cf. c. 1168). The Code adopts what the Council had decided in this regard: "Provision should be made for the administration of some sacramentals by qualified laypersons, at least in special circumstances and at the discretion of the Ordinary" (*SC* 79). It is the local ordinary who is competent to confer these functions upon laypersons; moreover, lay people are to do their utmost to insure that, in administering sacramentals, they do not convey the impression to others that they are dispensing sacraments.[11]

Lay people may, therefore, fulfill a suppletory role for those functions that pertain *ex se* to persons endowed with *potestas sacra*. Nevertheless, however important that the function may be—primarily in situations in which there is a great shortage of clerics or in which they are impeded from acting—it also entails a risk that should be avoided: clericalization of lay people. It would be preferable, on the other hand, to entrust to the laity, first and foremost, those functions in which the suppletory element is not present, so as to permit clerics to fulfill the functions which are theirs. Certainly, we do not suggest that the suppletory role of lay people be suppressed, but it is appropriate to keep it within its just measure, provided that there exists a genuine need for the good of souls.

9. Noted and clarified by EdM, art. 10.

10. Cf. R. NAVARRO VALLS, commentary on c. 1112, in *Pamplona Com*; J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze episcopali complementare al C.I.C.* (Milan 1990). (Editor's Note: For complementary norms promulgated by English language Conferences of Bishops, see Volume V, Appendix 3.)

11. Cf. EdM, art. 9, with special reference to the care of the sick.

231 **§ 1. Laici, qui permanenter aut ad tempus speciali Ecclesiae servitio addicuntur, obligatione tenentur ut aptam acquirant formationem ad munus suum debite implendum requisitam, utque hoc munus conscie impense et diligenter adimpleant.**

§ 2. Firmo praescripto can. 230 § 1, ius habent ad honestam remunerationem suae condicioni aptatam, qua decenter, servatis quoque iuris civilis praescriptis, necessitatibus propriis ac familiae providere valeant; itemque iis ius competit ut ipsorum praevidentiae et securitati sociali et assistentiae sanitariae, quam dicunt, debite prospiciatur.

§ 1. Lay people who are pledged to the special service of the Church, whether permanently or for a time, have a duty to acquire the appropriate formation which their role demands, so that they may conscientiously, earnestly and diligently fulfil this role.

§ 2. Without prejudice to the provisions of can. 230 § 1, they have the right to a worthy remuneration befitting their condition, whereby, with due regard also to the provisions of the civil law, they can becomingly provide for their own needs and the needs of their families. Likewise, they have the right to have their insurance, social security and medical benefits duly safeguarded.

SOURCES: § 1: *AA* 12, 28–32; *AG* 17
§ 2: *AA* 22; *AG* 17

CROSS REFERENCES: cc. 129 § 2, 149, 150, 213, 217, 218, 221, 223, 228, 229, 230 § 3, 231 § 2, 253, 281, 386, 463 § 1, 5° et § 2, 471, 482, 483, 492, 494, 512, 517 § 2, 528, 536, 537, 756, 762, 773, 776, 780, 785, 796, 804, 806, 810–812, 818, 821, 823, 1274 § 3, 1278, 1282–1284, 1286, 1290, 1421 §§ 2–3, 1424, 1428, 1435

COMMENTARY

Ernest Caparros

1. *Scope of the canon*

This norm considers only lay people "who devote themselves to special service of the Church" (cf. *CCEO*, c. 409). The terms of the canon lead to establishing criteria that would allow us to determine its scope with

precision. For those lay people, two conditions should converge: *a)* availability, or an offer made to the competent authority (whether the latter belongs to the hierarchical structure or to the life and holiness of the Church: cf. c. 207 § 2) on the part of the layperson, for the purpose of devoting himself/herself to this special service; and *b)* an effective commitment, by means of a contractual work relationship, to an activity which requires dedication on the part of the layperson to a specific task.

In our judgment, the working juridical relationship is not sufficient in and of itself. It should exist as a *conditio sine qua non*, but it should be integrated into the context of availability to the ecclesiastical Hierarchy, which would proceed from the dedication (*addicuntur*) of the layperson to the mission or the specific task. Nor is simple availability of a benevolent nature sufficient without a stable working relationship. Such stability, in this context, does not necessarily mean permanence, but instead, significance of commitment.

Those lay people, whether "single or married," who "put their person and their professional competence at the service of institutions and their activities" (*AA* 22) are, therefore, the ones intended to be governed by this canon. This involves those members of the faithful who, within a certain level of stability, pledge themselves to perform functions of direct service to the Church. This may include, without a doubt, "those lay people who devote themselves to associations and works of the apostolate, whether within the confines of their own country, or in the international area, or, above all, in the Catholic communities of the missions and of the emerging Churches" (*AA* 22). Let us call to mind, then, the catechists, as well as the professionals, the technical experts, or the craftsmen who are willing to render service to the Church mediately through their contributions to implementing services or action intended for the development of the newly-emerging Churches (*AG* 17). But the canon can also be applied to those people to whom the competent authorities entrust ecclesiastical offices (cf. c. 228 § 1).

The language of the canon, on the other hand, does not allow us to include under this category those lay people who work in ecclesiastical entities or for them, whether on a permanent or an occasional basis: the work and services contract, or the mandate, can exist in relation to persons in distinct professions and offices without having to apply the norms stated in the canon that is now the subject of our commentary. The source of this provision (*AA* 22; *AG* 17) allows us to state that the simple fact of having a professional or working relationship with an ecclesiastical entity or with an apostolic activity is not sufficient to apply this norm. Even more, in the majority of cases, that relationship will be governed exclusively by state law and by contracts between the individual and the entity or the ecclesiastical organization.

Also excluded from this canon is the vast field of charity or volunteer work. Even though the competent ecclesiastical authorities can, in

this context, entrust specific tasks to lay people, the element of a stable working relationship, in the sense of obligation, would be absent in those cases that would allow us to apply this canon.[1]

2. *The obligations of the lay employee*

We are using the expression lay employee in the precise sense of the preceding paragraph. The Code imposes upon that layperson a two-fold obligation: formation and performance of their functions.

a) *The obligation to acquire the appropriate formation*

This obligation of the laity is normally transformed into a right for him or her (see commentary on c. 229, no. 1), and reciprocally, into an obligation for those who dispense this formation. It must be asked, moreover, at what moment in time can this obligation be demanded, in other words, when should this layperson have acquired this formation.

It is possible that a specific formation (university, professional, technical, etc.) may be required in order for one to be fit to discharge a specific assignment competently. In those cases, normally this formation should have been acquired before the particular assignment is entrusted to the layperson. This does not exclude the possibility, however, that the agreement between the competent authority and the layperson may precede the start of exercising that position and that acquisition of this formation may become a contractual obligation of the layperson, who must then acquire it according to the terms of the contract. In those cases, this may involve formation that can be considered to have been acquired by earning a certificate, diploma or degree.

Nor does this preclude the possibility, even if the required qualifications to exercise the position that has been held by the layperson, that the latter must continue to keep his training current, so as not to lose one's qualifications. This would normally be a responsibility of the layperson, but it is possible for the organization of the Church to assume its share of responsibility towards that obligation.

Finally, whenever it is not a matter of professional formation of work, but rather it involves deeper immersion into the doctrinal knowledge of the faith or of improvement of spiritual life, required by the job that has been entrusted,[2] we find ourselves facing a permanent obligation which the layperson cannot neglect (see c. 217 and its commentary), and,

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1. For a more complete study, see J. DE OTADUY, "El derecho a la retribución de los Laicos al servicio de la Iglesia," in *Fidelium Iura* 2 (1992), pp. 187–206.

2. Cf. *EdM*, art. 3, where the point is clarified that the seminaries are not the place where the said formation must be given.

as a result, in the presence of a right which the layperson holds before those people who can provide him with that formation.

b) *The obligation to fulfill one's task as a prudent and diligent person*

The tradition of codified civil law is quite familiar with the notion of the "good family man" (according to classic terminology), or that of the "prudent and diligent person" (identical at heart, but with a more modern form). When the final section of § 1 of the canon imposes on the laity the obligation to fulfill their function "conscientiously, earnestly, and diligently," it is adopting this classic idea, which has been, moreover, stated explicitly in c. 1284 (cf. c. 1523 *CIC*/1917). This same idea can be found in cc. 1282 and 1983, from a more specific perspective.

3. *The obligations of the employer*

Paragraph 2 of the canon indeed imposes upon the employer the obligation to pay lay employees a *just salary* and to provide them with social and medical benefits. It could also be obligated to facilitate formation.

a) *A just salary*

This salary should take into account "the needs and the contributions of each person" at the same time (*CCC*, 2434). "Remuneration for work should guarantee [a] man the opportunity to provide a dignified livelihood for himself and his family on the material, social, cultural, and spiritual level, taking into account the role and productivity of each, the state of the business and the common good" (*GS* 67; cf. *CCC*, 2434). This just salary should, therefore, be individualized and set according to the needs of the employee and of his family, and taking into account at the same time other elements considered as a whole. Nor should the provisions of state law be forgotten or dismissed, according to this same canon, such as those involving minimum wages.

What is ideal would be that, when setting *just salaries*, both for the laity governed by this canon as well as other people who maintain working relationships with organizations of the Church (let us recall those lay people who have received the ministries of lector and acolyte are not entitled to a salary simply because of that fact: cf. c. 230 § 1 *in fine*), those organizations would scrupulously respect the contractual obligations of justice imposed by the state legislator, as well as those inferred from the social doctrine of the Church.

b) *Social security and medical insurance*

This same § 2 explicitly indicates that those lay people "are entitled to have their insurance, social security and the so-called medical healthcare benefits duly provided." This constitutes an area of great signifi-

cance, but the obligation of the employer in this regard will vary from one country to the next. In effect, in those countries where considerable public funds are allocated for this purpose, the responsibility of the employer will decrease proportionately. On the contrary, in those places where everything or almost everything is left to private initiative, it would be necessary for the entity in question (whether alone or in association with others) to concern itself with providing those benefits and assistance.

Also in regard to this point, ecclesiastic entities should try to align themselves with the best employers, both in those countries where material well-being and healthcare are assumed primarily by public funds, as well as in those countries in which few, if any, of those funds are allocated to meet those needs.

c) *The possibility of the existence of the obligation to provide formation*

This obligation may have as its source the contractual relationship between the organization and the individual; in that case, it should be interpreted within the context of this canon, above all, in regard to the behavior of the employee as a prudent and diligent person.

This obligation should also be considered in the event that *permanent formation* was required for the layperson to fulfill his/her duties adequately. In that case, depending on the context, the obligation to provide this formation may fall directly upon the employing entity or upon those competent authorities on which the entity relies. It also could be conceivable that the obligation of the layperson, transformed here into a right, would not directly affect the employer, but instead other ecclesiastical entities upon which the obligation to provide this formation, such that the employer would only be indirectly affected, to the extent that it would have to release lay employees, if necessary, from their obligations, so that they could participate in the appropriate means of this formation.

TITULUS III
De ministris sacris seu clericis

TITLE III
Sacred Ministers or Clerics

INTRODUCTION

Tomás Rincón

1. After the common status of the faithful (title I) had been established, derived from the principle of fundamental equality, as well as the status of the lay faithful (title II), based on the principle of functional diversity, in this title, the Code regulates the personal status of the clergy or sacred ministers, insofar as they are a manifestation of that diversity of functions which has its ontological roots in the sacrament of orders and which is called the hierarchical principle.

2. Sacred ministers or clerics are (at the current time this is a matter of equivalent terms, from the canonical point of view) those members of the faithful who have received the sacrament of orders and who are devoted sacramentally to the exercise of the sacred functions of teaching, sanctifying, and guiding the Christian people in the name of, and also, at times, in the person of Christ. Consecration and mission are, therefore, two ontological components of the condition of a sacred minister. Through sacramental *consecration*, the sacred minister is configured in a special way with Christ, Head and pastor of the Church; by virtue of this, he is situated not only within the Church, but also at the forefront of the Church. The sacrament of orders confers upon him a sacred power, thereby making him capable of exercising those sacred ministries that demand that power, and allowing him to participate at the same time in the universal mission of Christ, Head and pastor. Both aspects, consecration and mission, essentially co-exist in such a way and are related to each other so that the notion of consecration considered by itself has no place here, nor is mission conceived of as requiring priestly powers unless the sacrament of orders has not been previously received. All of this explains that the hierarchical constitution of the Church is grounded in sacred ministries; that the exercise of ecclesiastical ministries has been entrusted primarily to the sacred ministers, including those ministeries which do not demand the full care of souls; and that, for this same reason, the sacred

ministers constitute, as a whole, the central core or primary line of the ecclesiastical organization.

3. The fact that they constitute the primary line in ecclesiastical organization means, among other things, that sacred ministers are the direct recipients of all those norms whether within, or outside of, the Code, which regulate the most varied ecclesiastical offices which they hold. But what this title contemplates and covers is not ministerial status, even though, to a large degree, it affects clerics, but only the personal status of the clergy, which is founded in his sacred consecration and mission and which has, for this reason, a stable and universal character, whatever the position held or the specific office performed within the ecclesiastical organization.

Adopting a millennium-long tradition, the *CIC*/1917 considered clerics, for canonical purposes, not only the sacred ministers, that is, those who had received the sacrament of orders, but also those members of the faithful who had received the first tonsure, the minor orders (acolytes, exorcists, lectors, porter), and the major order of the subdiaconate. For this reason, in the former discipline, the terms *cleric* and *sacred minister* were not equivalent, which forced them to refer to the expression *ordenados in sacris* in order to designate those clerics who were, at the same time, sacred ministers.

Vatican Council II, as is well known, did not introduce any innovation into the meaning of the term *cleric*. But its doctrinal focus in that regard would foster those changes that would occur in the coming years. In fact, on August 15, 1972, Pope Paul VI promulgated the Motu proprio *Ministeria quaedam*, whose primary innovation consisted precisely in restricting the notion of cleric, by identifying it with that of sacred minister, while at the same time consequently, certain ecclesial ministries were declericalized, and their exercise entrusted to the laity. All of this occurred in the face of a minority theological current which stood, on the contrary, for widening the concept of cleric, and as a result, a greater clericalization of certain ecclesial ministries which did not require the sacrament of orders, failing to notice that the conciliar ecclesiological orientation pointed decidedly towards a greater and more active participation of non-ordained members of the faithful in the building up of the Body of Christ.

The direction of the reform, led by Paul VI as described above, has been incorporated into the Code. Thus, one is a cleric or sacred minister (both terms are equivalent (c. 207)) from the order of the diaconate on up (c. 266). On the contrary, they do not lose their lay condition: those who receive the ministries of lector or acolyte are true members of the laity, the former minor orders, whether in a stable manner (c. 230 § 1), or as a requisite for ordination as a deacon (cc. 1035, 1950, 1°). Therefore by restricting the concept of cleric and by entrusting those ministries to the laity, it is clear that a "declericalization" of such ministries has occurred, but, at the same time, it causes laypersons to be incorporated into the ec-

clesiastical organization as a result of their active participation in the *aedificatio Ecclesiae*, provided that the requirement of sacred orders is not a hinderance, whether directly or indirectly. In any event, the layperson who acts as lector or acolyte in a liturgical celebration, in principle does not exercise any suppletory function, but only a function inherent to his condition as a member of the baptized.

4. Clerical status, therefore, traces its origins to the sacrament of orders, and is structured in accordance with the three sacramental levels to which this sacrament has been differentiated: diaconate, presbyterate and episcopate. As is well known, for a long time the sacramentality of the episcopate was the subject of doctrinal controversy. It is true that the Council of Trent affirmed the superiority of the bishops in regard to presbyters, but not the sacramentality of episcopal ordination. Perhaps for this reason, c. 949 of the *CIC*/1917 did not include the episcopate among the various major *ordines* comprising the clerical state. But Vatican Council II already taught the sacramentality of the episcopate with clarity, by saying that "the fullness of the sacrament of Orders is conferred by episcopal ordination, which, for this reason, has been called 'the high priesthood' or 'the acme of the sacred ministry' in both the liturgical tradition of the Church and in the language of the Fathers" (*LG* 21). Thus, it is based on this foundation that c. 1009 § 1 included the episcopate among the three *ordines* comprising the sacrament of orders. Properly speaking, the episcopate and the presbyterate constitute the priestly order while the diaconate is received *non ad sacerdotium, sed ad ministerium* (*LG* 29). In regard to presbyters, Vatican Council II ratified their condition as true priests of the New Testament, genuine participants in the priesthood of Christ, and therefore, in the universal mission entrusted to the Apostles, even though they do not have the stature of Pontificate and, as a result, they depend upon the bishops in the exercise of their power (cf. *LG* 28 and *PO* 10).

5. Apart from that restricted notion of cleric, and based on the view of the episcopate as the supreme degree of the sacrament of orders, the Council similarly fostered a new concept of clerical *status*, stripping it of its class-based connotations that had come through in *CIC*/1917. In effect, clerics, since they are constituted as a *status*, formed a caste, a class of distinct persons, with a juridical patrimony rooted in their *status*, which, since it contained the element of power, gave rise to the fact that the Church was structured as an unequal society, not only from a functional, but from a personal point of view as well.

The clear affirmation of the Council about the radical equality of all members of the baptized and the common status of faithful implied, in and of itself, a surpassing of the caste-based conception and therefore, questioned the concept itself of *status clericalis*, for which reason there were canonists who argued for its suppression in order to avoid the confusion which it could generate. Such a proposal was not formally accepted, since

in fact the term *clerical state* has been repeated many times in the Code (cc. 194 § 1, 1°, 285, 289, 290–293). However, since the constitutional principle of radical equality of all members of the baptized (c. 207) was incorporated into the code, the concept of clerical *staus* must be interpreted in light of that principle, stripped, therefore, of any caste-based connotations. But it is appropriate in this regard not to confuse the theological and juridical planes, in order that proclamation of the radical equality of all the members of the faithful should not be interpreted as an underestimation of the sacramental factors of sacred orders and of their repercussions, including social ones, on the person and life of the sacred minister. In this sense, it is true that sacramental consecration and the sacred mission to which the cleric is destined to give rise to a new dignity, with social relevance, but which do not lay the foundation, from a juridical point of view, for a personal *status* segregating clerics from the principle of radical equality of all members of the faithful. The cleric, in effect, is not more of a person, with greater personal prerogatives, than other people in the Church; the priest is not more Christian than the other members of the faithful; he is not a Christian with a higher rank. For all of this, it does not seem correct based on the specific personal conformation in Christ which confers the sacrament of orders, to establish any differentiation of people with juridical significance, or a reaffirmation of the concept of clerical *state* in its caste-based version.

6. The systematic ordering of the entire discipline of the clergy covers the following chapters:

—Chap. I: *On the formation of Clerics*. If the former criteria were followed, this chapter would have been located in book III, alongside the other institutions concerning Catholic education. In view of the fact that the seminary is not only a center of teaching, but also a place of human, spiritual and pastoral formation of future priests, the legislator has chosen to place it within the framework of clerical discipline. In any event, the subject matter regulated in this chapter continues to be connected with the section devoted to Catholic education in book III, given that the same dicastery of the Roman Curia is competent over both subjects: the Congregation for Seminaries and Institutes of Study (cf. *PB* 112–113).

In this chapter, the initial formation of candidates to the priesthood or to the permanent diaconate is solely considered. The permanent formation of the clergy is only taken up in the code within the context of the duties of the priest (c. 279).

Following the model of *Optatam totius*, the canonical regulation on this subject unfolds on two different levels: the institutional and the formative, properly speaking. The system of seminaries is established, on one hand, and the basic norms which are to inspire the path of formation of the future priest in the four dimensions of his existence, human, spiritual, intellectual and pastoral, are delineated. On the other hand, since they are basic norms, they require a subsequent development and adaptation to the

specific circumstances of each region. This task is fulfilled, at a universal level, by the *Rationale Fundamentalis Institutionis Sacerdotalis*, promulgated by the Congregation for Catholic Education in 1970, revised and adapted for the *CIC* in 1985; and on a particular level, the programs of formation that are established and periodically reviewed by the Bishops' Conferences within the framework of a given nation, as well as the regulations of each seminary approved by the bishop, and the statutes of an inter-diocesan seminary approved by the bishops concerned.

Recently, as the fruit of the Synod of Bishops in 1990, Pope John Paul II published the Apostolic Exhortation *Pastores dabo vobis* (March 25, 1992), devoted to the formation, both introductory as well as permanent, of priests. The pontifical document does not modify the basic criteria of the discipline of the code; instead, it is an authorized gloss of its norms, while it serves, at the same time, as a guiding light and criteria for drafting particular norms, and, if applicable, for revising them.

—Chap. II: *On the Enrollment or Incardination of Clerics*. Incardination is one of the oldest institutes of ecclesiastical organization. It emerged in a primarily pastoral sense, as soon as the Christian communities achieved a certain degree of stability. Over the course of time, that pastoral character, limiting ministerial service, continued to lose its original vigorousness and opened the way towards the concept of the discipline of incardination, thereby configuring the bond of submission to the same bishop and the same territory, and as an instrument of oversight and control.

In the vicinity of Vatican Council II, awareness arose that the instrument of incardination, as it was understood, was inadequate to provide a positive response to new pastoral problems, such as better distribution of the clergy or a greater mobility of priests in order to suitably handle specialized pastoral functions. These and other pastoral needs were those that, in the beginning, made the Council Fathers see the appropriateness of revising the old institute of incardination. But they soon realized that a simple canonical review would be insufficient, if there was no prior profound theological reflection on the nature of the presbyterate. The fruit of that reflection is *Presbyterorum Ordinis* 10, where the universality of the ministry of presbyters and its theological underpinnings are affirmed, as well as the consequences deriving from that principle for a proper regulation of incardination. Consistent with that conciliar doctrine, the Pope has recently emphasized the universal dimension of the priesthood: the presbyter "is ordered not only to the particular Church but also to the universal Church (cf. *PO* 10), in communion with the Bishop, with Peter and under Peter"; and all of this is so because "through the priesthood of the Bishop, the priesthood of the second order is incorporated in the apostolic structure of the Church," and consequently into its universal mission (*PDV* 16).

In light of that theological principle, it becomes clear that all presbyters, by virtue of the sacrament of orders, are ministers of Jesus Christ, in other words, ministers of the universal Church. The reason for the existence of incardination is to juridically limit this ministry. What is involved, therefore, is a relationship of service to a specific portion of the people of God, for the purpose of a better order and better fulfillment of the universal mission which the presbyter receives in the sacrament of orders. For that reason, it is logical that incardination is not constrained solely to territorial structures, but that it is open to other jurisdictional structures of a personal nature, whenever particular pastoral tasks demand it. Inasmuch as it is a relationship of service, without detriment to the fact that it is a stable bond, it must have the sufficient flexibility postulated by the principle of solidarity for the common good of the entire people of God. Along this same perspective on the ministry, it can be better understood that incardination constitutes a bond joining the presbyter not only to the bishop, but also to the other components of that portion of the people of God in which his ministry assumes concrete form: presbyter and Christian people. As a result of this, many of the duties and rights comprising the personal status of clerics, while they are grounded in sacred orders, are established and specified through incardination. Perhaps for this very reason, the legislator has preferred to locate the system of incardination within the *CIC*, in the chapter that precedes the obligations and rights of clerics.

— Chap. III: *On the Obligations and Rights of Clerics*. The ontological configuration with Jesus Christ which sacramental consecration entails, as well as the sacred mission to which clerics are destined, is the reason for their existence, the true foundation of the specific juridical status of clerics established in the present chapter. An attempt has been made to harmonize, on one hand, the life of clerics (that is, their personal behavior) with the sacred nature of their ministry, while, on the other hand, it seeks to safeguard the priestly identity, in the face of possible attempts at secularization, based at times, not on mere disciplinary reasons, but on true focus of dogma, such as, for instance, the lack of essential distinction between the common and ministerial priesthood.

This safeguarding of the identity of the ministerial priesthood, and of its dignified and effective exercise, has a universal scope as its very foundation. Thus, the universal value and effectiveness of the status of clerics, as established in the *CIC*, without detriment to the important function which particular laws fulfill in determining and adapting this status to the concrete circumstances of a particular church where the cleric exercises his ministry. In this sense, there many norms which deliberately remain indeterminate, so that the particular Laws may specify and establish the scope of some obligations, or the concrete content of certain rights.

The dignity and social honor which the sacred minister deserves, without doubt, within the Church does not imply inequality, or a situation

of privilege, insofar as it is the common condition of the faithful. Perhaps for this reason, and because its effectiveness depended, in the final analysis, on what systems of secular law or concordat norms would establish in this regard, the old privileges of the canon, of jurisdiction, of personal exemption, and of competence, have disappeared from the status of clerics.

Among the positive duties expressly formulated in this chapter, the following stand out:

— duties of obedience and availability for ministry;

— duties of fraternity and of mutual cooperation among clerics;

— duties in regard to lay people and their specific function in the Church and in the world;

— the gift-duty of celibacy;

— the duty of ecclesiastical dress;

— the duty to seek sanctity, grounded in a profound spiritual life, through faithful fulfillment of the ministry.

Among the *prohibitions* that stand out are the following:

— conduct not proper to the clerical state;

— the holding of public office in the civil arena;

— political and union activities;

— activities related to economic matters, such as the usual exercise of commerce or industry;

Unlike the *CIC*/1917, the universal law currently in effect formally recognizes the following *rights* of clerics:

— the right of association, both in civil associations that do not detract from their clerical status, and in associations created within the heart of the Church (this presupposes the recognition in the areas of autonomy and freedom of clerics);

— rights pertaining to an adequate remuneration, and social security benefits;

— the right to a legitimate vacation period.

Finally, it must be pointed out that fulfillment of some of the duties implies the existence of true rights. Such is the case of the duty of permanent formation within the human, spiritual, intellectual and pastoral spheres (c. 279). As the Pope has recently reminded us (cf. *PDV* 70), the permanent formation of priests is a demand of justice that corresponds with the right of the people of God to appropriately receive the riches of salvation. But that juridical duty implicitly entails the right of the priest to be given the necessary means for that formation.

CAPUT I
De clericorum institutione

CHAPTER I
The Formation of Clerics

232 **Ecclesia officium est atque ius proprium et exclusivum eos instituendi, qui ad ministeria sacra deputantur.**

It is the duty and the proper and exclusive right of the Church to train those who are deputed to sacred ministries.

SOURCES: c. 1352; *OT* Passim; SCSUS Let., 14 mai 1963

CROSS REFERENCES: c. 1027

COMMENTARY
Davide Cito

This canon, whose immediate source is c. 1352 *CIC*/1917, exhibits, however, marked progress in relation to Pio-Benedictine legislation, not only insofar as its systematic placement is concerned, but also in regard to the language of its text, even though it may be fairly similar to that used in the abrogated Code.

In reference to the first aspect, it has been unanimously emphasized[1] that its current placement responds better to the concept of *formation*, to be understood as a process that includes all dimensions of the person; the *CIC*/1917, however, favored above all the doctrinal aspect, and as a consequence the material that was included in part IV of book III ("De magisterio ecclesiastico"). Furthermore, while the abrogated Code focused its

1. Cf. V. DE PAOLIS, "La formazione dei chierici," in *Il fedele cristiano* (Bologna 1989), pp. 116–117; commentary on the chapter "De clericorum institutione," in V.P. PINTO (Ed.) *Commento al Codice di Diritto Canonico* (Rome 1985); T. RINCÓN, commentary on the chapter "De clericorum institutione," in *Pamplona Com.*

attention on the seminary in accordance with its juridical and patrimonial structure (hence the name of this same title XXI: "De seminariis"), in this context, on the contrary its prominent position focuses on the candidate to the sacred ministries, and the juridical positions of individuals and the structures devoted to his formation are delineated in reference to the individual.

The canon, analogous to what was previously in c. 1352 *CIC*/1917, asserts the inherent and exclusive right of the Church to train its own ministers, a right which, in its external dimensions (in other words, in its relations with the civil community), is one component of religious freedom, affecting, therefore, the entire confessional community. *Dignitatis humanae* 4 affirms the same: "Religious communities also have the right not to be hindered by legislation or administrative action on the part of the civil authority in the selection, training, appointment and transfer of their own ministers." At the same time, it is necessary to stress that if the *CIC*/1917 was limited to proclaiming this right of the Church ("ius est proprium et exclusivum") in order to protect its independence and freedom in the face of possible acts of unlawful interference by the secular powers, the canon we are now examining stresses in the first place the duty of the ecclesial community to provide for the formation of its ministers, while the right can be inferred as a logical consequence, in order to be able to comply with this obligation ("officium est atque ius proprium et exclusivum"). This has substantial intraecclesial significance because it translates more precisely the vocational dynamics onto a juridical plane, such that the right-duty of the Church derives from the call of the Lord: "the Church ... has the grace and responsibility to accompany those whom the Lord calls to become his ministers ..." (*PDV* 65).

Recipients of this right-duty of the Church are those "qui ad sacra ministeria deputantur." The modification in language, compared to the prior Code ("qui ecclesiasticis ministeriis devovere cupiunt": c. 1352 *CIC*/1917), emphasizes that the specific juridical relationship between the candidate and the Church emerges from the ecclesial act of deputation of its sacred ministries, which is subsequent to the verification of the requirements of suitability (cf., for example, c. 241 § 1 pertaining to *admissio* into a major seminary), without weakening the duty to promote vocations (c. 233) or the pastoral attention towards those who "feel themselves called" to discharge a specific ministry. Even though the canon is included in the chapter dealing with the formation of the clergy, it seems appropriate to extend its scope of application to the formation of all candidates to ecclesial ministries for those ministries created in a stable manner, as well as for the temporal ministries (c. 230).[2]

2. Cf. V. De Paolis, "La formazione dei chierici...," cit., p. 117.

In addition to the Holy See, the Bishops' Conferences, and the diocesan bishops, those who are responsible for the ecclesial organizations into whose service the candidate has been deputed are also understood to be included under the term of Church.

The content of the right of the Church to educate its own ministers makes reference to all that affects the relevant ministry in a specific way; in other words, the various dimensions of formation (human, spiritual, intellectual and pastoral), the areas of formation and those individuals who are responsible for providing such formation (cf. *PDV* 42).

233 **§ 1. Universae communitati christianae officium incumbit fovendarum vocationum, ut necessitatibus ministerii sacri in tota Ecclesia sufficienter provideatur; speciatim hoc officio tenentur familiae christianae, educatores atque peculiari ratione sacerdotes, praesertim parochi. Episcopi dioecesani, quorum maxime est de vocationibus provehendis curam habere, populum sibi commissum de momento ministerii sacri deque ministrorum in Ecclesia necessitate edoceant, atque incepta ad vocationes fovendas, operibus praesertim ad hoc institutis, suscitent ac sustentent.**

§ 2. Solliciti sint insuper sacerdotes, praesertim vero Episcopi dioecesani, ut qui maturioris aetatis viri ad ministeria sacra sese vocatos aestiment, prudenter verbo opereque adiuventur ac debite praeparentur.

§ 1. It is the duty of the whole Christian community to foster vocations so that the needs of the sacred ministry are sufficiently met in the entire Church. In particular, this duty binds Christian families, educators and, in a special way, priests, especially parish priests. Diocesan Bishops, who must show the greatest concern to promote vocations, are to instruct the people entrusted to them on the importance of the sacred ministry and the need for ministers in the Church. They are to encourage and support initiatives to promote vocations, especially movements established for this purpose.

§ 2. Moreover, priests and especially diocesan Bishops are to be solicitous that men of more mature years who believe they are called to the sacred ministries are prudently assisted by word and deed and are duly prepared.

SOURCES: § 1: c. 1353; PIUS PP. XI, Let. *Officiorum omnium*, 1 aug. 1922 (*AAS* 14 [1922] 449–458); PIUS PP. XI, Enc. *Ad catholici sacerdotii*, 20 dec. 1935 (*AAS* 28 [1936] 44); PIUS PP. XII, m. p. *Cum nobis*, 4 nov. 1941, (*AAS* 33 [1941] 479); SCSUS Normae, 8 sep. 1943 (*AAS* 35 [1943] 369–370); PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 23 sep. 1950, III (*AAS* 42 [1950] 681–694); Secr. St. Let., 13 iul. 1952; IOANNES PP. XXIII, Alloc., 16 dec. 1961 (*AAS* 54 [1962] 32–36); Secr. St. Let., 2 feb. 1962; SCSUS Litt. circ., 20 feb. 1962; PAULUS PP. VI, Let. *Summi Dei*, 4 nov. 1963 (*AAS* 55 [1963] 979–995); Secr. St. et SCR *Notif.*, 23 ian. 1964; SCR Litt. circ., 2 feb. 1964; SCR Litt. circ., 15 ian. 1965; *CD* 15; *OT* 2; *AA* 11; *PO* 11; *RFIS* 5–10; *DPMB* 197; SCCE Litt. circ., 2 ian. 1978

§ 2: PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 23 sep. 1950, III

(*AAS* 42 [1950] 684); *OT* 3; *RFIS* 19; *DPMB* 196; SCCE Litt. circ., 14 iul. 1976

CROSS REFERENCES: cc. 385; 791, 1°

COMMENTARY

Davide Cito

"[The priestly vocation] ... is also a gift to the Church as a whole, a benefit to her life and mission. The Church, therefore, is called to safeguard this gift, to esteem it and love it. She is responsible for the birth and development of priestly vocations" (*PDV* 41). If, from a juridical point of view, the vocation manifests itself, for the individual who is the recipient of this gift, as a right to freedom, so as to be immune from coercion in the choice of the state of life (c. 219), the Christian community, in all of its constituent parts, simultaneously has a duty, also juridical in nature, in regard to the birth and maturation of priestly vocations. This responsibility, enunciated in the canon, which summarizes *Optatam totius* 2 in synthesis, assumes various manifestations in those interested individuals, by virtue of two fundamental coordinates: the age of the candidate and the various stages along the vocational path.

Insofar as the age of the candidate is concerned, the canon distinguishes between those who receive a vocation in their youth (§ 1) and those who "feel themselves called in their mature years" (§ 2). In contrast, insofar as the vocational path is concerned, two periods can be distinguished: the first, pertaining to the time of discovery of the vocation, and secondly, to the time which has transpired from the moment of ecclesial discernment of the vocation. The canon seems to refer directly to the juridical position relating to the first of these two moments, and therefore considers the "vocational pastoral" within a more circumscribed scope than that which would pertain to its comprehensive content, which would encompass within itself the entire course extending between the birth of the vocation and ordination.[1]

Even recalling that the entire Christian community has the duty to promote priestly vocations, the canon only makes explicit mention of three groups of individuals: the family, educators, and the bishop. This can even be supplemented with the more exhaustive list proposed by *Pastores dabo vobis* 41, including, in addition to the individuals already indicated, catechists, professors, youth pastoral promoters, groups, movements, and

1. Cf. F. Coccopalmerio, "La formazione al ministero ordinato," in *La Scuola Cattolica* 112 (1984), pp. 220–221.

association of the lay faithful; in effect, the document cited above stresses that "the problem of priestly vocations cannot in any way be delegated to some 'representative' group (priests in general, and priests working in the seminary in particular), for, inasmuch as it is a vital problem which lies at the very heart of the Church, it should be at the heart of the love which each Christian feels towards the Church" (*PDV* 41).

From this perspective, even though a generic duty falls upon all members of the Church to encourage priestly vocations, there are specific obligations for given individuals. The diocesan bishop, who "selects, calls, forms and admits to the sacrament of orders those candidates whom he considers suitable,"[2] is the first one responsible for the pastoral vocations. He must encourage vocations to the maximum degree possible (c. 385), and should "foster and coordinate various initiatives on behalf of vocations" (*DPMB* 197; *RFIS* 5–10). Apart from the support he may give to already existing initiatives, "in each of the dioceses, regions and nations, the work of vocations shall be established and promoted, according to the norms set forth in pontifical directives," making use of the collaboration among priests, religious and the lay for this purpose (*RFIS* 8).[3]

Insofar as the so-called "adult" vocations are concerned, the canon attributes to the diocesan bishops and to priests the responsibility of providing them with suitable formation. The concept of the adult vocation is outlined in the circular Letter *Vocationes adultorum* in a rather residual way, in other words, in the sense of "all those vocations which do not fit into the concept of the so-called 'normal' vocation or educational path."[4] It seems, however, that this concept should not be reduced to a mere question of record, even though this could constitute an element of maximum importance, but rather, it should be judged within the context of the ecclesial and human condition of the candidate.[5] The particular condition of the candidate forces those individuals entrusted with his preparation to pay special attention.

2. CCE, "Direttive sulla preparazione degli educatori nei seminari," November 4, 1993, no. 17, in the supplement to *L'Osservatore Romano*, January 12, 1994, no. 8.

3. Cf. Pius XII, mp *Cum nobis "de Pont. opere vocationum sacerdotalium apud S. Congregationem seminariis et studiorum universitatibus praepositam constituendo,"* November 4, 1941, in *AAS* 33 (1941), p. 479.

4. CCE, Litt. circ. *Vocationes adultorum*, Prot. 4/76, July 14, 1976, no. 1.

5. Cf. D. MOGAVERO, "I ministri sacri o chierici," in *Il diritto nel mistero della Chiesa* II, 2nd ed. (Rome 1990), p. 91.

CITO

234 § 1. **Serventur, ubi exsistunt, atque foveantur seminaria minora aliave instituta id genus, in quibus nempe, vocationum fovendarum gratia, provideatur ut peculiaris formatia religiosa una expedire iudicaverit Episcopus dioecesanus, seminarii minoris similisve instituti erectioni prospiciat.**

§ 2. **Nisi certis in casibus adiuncta suadeant, iuvenes quibus animus est ad sacerdotium ascendere, eaornentur humanistica et scientifica formatione, qua iuvenes in sua quisque regione ad studia superiora peragenda praeparantur.**

§ 1. Minor seminaries and other institutions of a similar nature promote vocations by providing a special religious formation, allied to human and scientific education; where they exist, they are to be retained and fostered. Indeed, where the diocesan Bishop considers it expedient, he is to provide for the establishment of a minor seminary or similar institution.

§ 2. Unless the circumstances of certain situations suggest otherwise, young men who aspire to the priesthood are to receive that same human and scientific formation which prepares their peers in their region for higher studies.

SOURCES: § 1: c. 1354 §§ 1 et 2; PIUS PP. XI, Let. Ap. *Officiorum omnium*, 1 aug. 1922 (*AAS* 14 [1922] 451–452); SCSUS Let., 26 maii 1928; PIUS PP. XII, Alloc., 6 sep. 1957 (*AAS* 49 [1957] 845–849); SCSUS Litt. circ., 22 feb. 1963; PAULUS PP. VI, Let. *Summi Dei*, 4 nov. 1963 (*AAS* 55 [1963] 979–995); *OT* 3; SCCE Litt. circ., 23 maii 1968; *RFIS* 11–19; *DPMB* 194
§ 2: SCSUS Let., 3 maii 1947, II; PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 23 sep. 1950, III (*AAS* 42 [1950] 687); *SS* IV; *OT* 13; *RFIS* 16

CROSS REFERENCES: c. 232

COMMENTARY

Davide Cito

Minor seminaries or similar institutions

"As long experience shows, a priestly vocation tends to reveal itself in the preadolescent years or in the earliest years of youth. Even for peo-

ple who decide to enter the seminary later on, it is not infrequent to find that God's call had been perceived much earlier" (*PDV* 63). Thus, the dynamic inherent to the emergence and discovery of the priestly vocation grants the Church the right-duty to render adequate pastoral care in relation to those who, even though they are young, may be recipients of this supernatural gift.

CIC/1917 established in c. 1353 a duty for priests, especially parish priests, to cultivate the early seeds of the existence and growth of the divine call in those children who show signs of a possible vocation. In addition, c. 1354 § 2 stated the appropriateness of creating two different seminaries in those larger dioceses, the "minor" and the "major," in which appropriate humanistic-literary and philosophical-theological formation were to be taught, respectively.

Therefore, within the single concept of the seminary (the place where the possible priestly vocations are cultivated and formed), the difference between "minor" and "major" resided, above all, in the different types of studies which students had to pursue.[1]

With a desire to reaffirm the vocational dimension character of seminaries, *Optatam totius* 3 simultaneously stressed two aspects: *a)* that the element characterizing the minor seminaries consists of the "suitable spiritual direction," oriented towards "following Christ the Redeemer with generous souls and a pure heart" and *b)* that the same formation can be taught at other vocational institutions, different from the minor seminaries, which, however, constitute the paradigm of reference.

Upon conciliar instructions, a problematic situation has arisen, which has made the identity and suitability of such institutions questionable,[2] and which also, above all, manifested itself in the course of the work involving drafting the *CIC*,[3] in regard to admission into the minor seminary of students who had not exhibited any signs or intentions of following a vocational path.

However, the textual process of this canon[4] and the successive clarifications offered by documents originating with the Holy See,[5] both before and after promulgation of the Latin *CIC*, allow us to distinguish "minor seminaries or other similar institutions" from those about which the

1. Cf. F.X. Wernz-P. Vidal, *Ius canonicum* IV, II (Rome 1935), pp. 111–112.
2. Cf. CCE, Litt. circ. "La question des petits séminaires," May 23, 1968, in *EV* III (Bologna 1977), nos. 397–419.
3. Cf. J. Herranz, *Studi sulla nuova legislazione della Chiesa* (Milan 1990), pp. 269–270.
4. Cf. *Schema "De Populo Dei,"* Typis polyglottis Vaticanis 1977, c. 85 § 2; *Comm.* 8 (1976), pp. 111–112, and 14 (1982), pp. 159–160.
5. CCE, Note *L'institution des petits séminaires*, June 7, 1976, in *EV* V (Bologna 1979), nos. 2054–2064; *RFIS* 11–18; *PDV* 63–64.

canon speaks as entities having the mission of helping to discern, through appropriate religious formation, a possible vocation which exhibits itself at least in an incipient way.

As doctrine has pointed out,[6] it is true that the canon gives a uniform treatment, by virtue of the ends that they pursue, to those institutions which appear as distinct in *Optatam totius* 3; overall, it allows us to make a clear distinction between these realities, which are vocational by definition, from a normal Catholic school.[7] This entails that young men who "formally accept—they and their family—the possibility of a vocation" shall be accepted into the minor seminary or other similar institution. The signs of this possibility should be more or less evident or discernible; the willingness could be more or less explicit, but acceptance of a possible vocation should be formal, with those nuances that age brings with it."[8]

In this way, then, by taking into account the substantial differences due to their minor age, the specification of requirements for admission into the minor seminary shall be inspired, insofar as it is appropriate, by those requirements established in c. 241 § 1 for admission of candidates into the major seminary.

The canon invites us to maintain and encourage the creation of these institutions, even though it does not establish an obligation in this regard. By considering the possibility, however, of a vocational purpose, they can assume various configurations, according to the needs deemed to exist by the bishop. The canon does not provide a specific organizational structure for minor seminaries; they will follow the organizational line of major seminaries, at least in part.

More clarifications are offered insofar as the formation to be taught is concerned. It includes two aspects, both of which are needed: *a)* a particular religious formation; *b)* a humanistic and scientific preparation. In regard to the latter, § 2 specifies more precisely that it is suitable for the candidate to the priesthood to be endowed with "the human and scientific preparation that prepares their peers in their region for higher studies." This becomes particularly important, not only because it is essential to possess adequate preparation in order to pursue possible ecclesiastical studies in successive years, but also because an authentic formational journey should harmoniously develop all components of the human personality (cf. *RFIS* 14).

6. Cf. V. De Paolis, "La formazione dei chierici," in *Il fedele cristiano* (Bologna 1989), pp. 120–122.

7. Cf. T. Rincón, commentary on c. 234, in *Pamplona Com.*

8. CCE, Note *L'institution des petits séminaires...*, cit., no. 4.

235 **§ 1. Iuvenes, qui ad sacerdotium accedere intendunt, ad formationem spiritualem convenientem et ad officia propria instituantur in seminario maiore per totum formationis tempus, aut, si adiuncta de iudicio Episcopi dioecesani id postulent, per quattuor saltem annos.**

§ 2. Qui extra seminarium legitime morantur, ab Episcopo dioecesano commendentur pio et idoneo sacerdoti, qui invigilet ut ad vitam spiritualemet ad disciplinam sedulo efformentur.

§ 1. Young men who intend to become priests are to receive the appropriate religious formation and instruction in the duties proper to the priesthood in a major seminary, for the whole of the time of formation or, if in the judgment of the diocesan Bishop, circumstances require it, for at least four years.

§ 2. Those who lawfully reside outside the seminary are to be entrusted by the diocesan Bishop to a devout and suitable priest, who shall ensure that they are carefully formed in the spiritual life and in discipline.

SOURCES: § 1: cc. 972 § 1, 1354 §§ 1 et 2; BENEDICTUS PP. XV, Let. *Saepe Nobis*, 30 nov. 1921 (*AAS* 13 [1921] 556); PAULUS PP. VI, Let. *Summi Dei*, 4 nov. 1963 (*AAS* 55 [1963] 979–995); *OT* 4; *RFIS* Introductio, 1, 20; IOANNES PAULUS PP. II, Let. *Magnus dies*, 8 apr. 1979 (*AAS* 71 [1979] 392)
§ 2: cc. 972 § 1, 1370; Secr. St. Normae, 14 apr. 1946; *OT* 12; PAULUS PP. VI, Enc. *Sacerdotalis caelibatus*, 24 iun. 1967, 71 (*AAS* 59 [1967] 685); *RFIS* 42

CROSS REFERENCES: cc. 231 § 1, 232, 241 § 1

COMMENTARY

Davide Cito

Major seminaries

1. Based on what is stated in *Optatam totius* 4, this canon, which is inspired by c. 972 *CIC*/1917, establishes the obligation for those young men who seek admission into the priesthood, to receive the respective for-

mation at a major seminary; this obligation is reiterated in *RFIS,* 1, and in *Pastores dabo vobis* 60.

From a juridical point of view, the canon should lead us back to two more general principles. The first refers to the right-duty of the faithful to receive suitable formation in order to carry out the mission that the Church has entrusted to them. This is a juridical situation affecting all the faithful, even though the *CIC* only explicitly establishes it in the part devoted to the lay faithful (cf. c. 231 § 1). Therefore, this right-duty becomes especially significant in the case of sacred ministers, due to the decisive role this ministry assumes within the Church (cf. *OT Proemio*).

But a second principle should be added, inherent to the vocational dynamics. Because, in effect, the desire to join the priesthood does not confer any right whatsoever insofar as receipt of this sacrament is concerned. This does not involve explanation of a juridical position deriving from the condition of the faithful, as would be the case in contrast, in regard to the right to a doctrinal formation, as provided for in c. 229. But rather, from a juridical point of view, it only entails a mere estimation which awaits ecclesial recognition, so that it can give rise to specific juridical positions within this context. Since the responsibility of verifying the authenticity of the call to the priesthood falls to the authority of the Church, and more concretely, upon the bishop, it follows directly that the Church itself has the right-duty to establish, in the manner it considers most appropriate, the means and the instruments which appear suitable to discern and accompany the candidates to the priesthood in their vocations. "It is the task of the Bishop or the competent Superior not only to examine the suitability and the vocation of the candidate but also to recognize it. This ecclesiastical element is inherent in a vocation to the priestly ministry as such. The candidate to the priesthood should receive his vocation not by imposing his own personal conditions, but by accepting also the norms and conditions which the Church herself lays down, in the fulfillment of her responsibility" (*PDV* 35).

2. The current norms establish, in this regard, principles affecting not only the duration of the period of formation, but also the place in which it is to be pursued.

Intended recipients of these norms are only "those young men ['iuvenes'] who seek to join the priesthood," in other words, not the so-called adult vocations (see commentary on c. 233). For these latter ones, on the other hand, it would be necessary to select a suitable track of formation, which may not necessarily coincide with the major seminary: "It is not always possible and often it is not even appropriate to invite adults to follow the educational schedule of the major seminary" (*PDV* 64).

Insofar as the duration of the period of formation is concerned, the current canon is more rigorous than c. 972 *CIC*/1917; the latter provided for a stay in the seminary throughout the entire course of studies in sacred

theology (four years), unless the ordinary, for a grave reason, were to dispense with this requirement in individual cases. The current norms in effect widens this obligation to the entire period of formation, which usually encompasses six years, without excluding the possibility that, consonant with *PDV* 62, this time might be preceded by a preparatory period in the event that possible shortcomings in formation, due to the environment in which the young man had been educated, would make said preparation prior to the seminary suitable.

However, it is granted to the bishop, if circumstances so require it, to reduce the stay of the candidate at the seminary to not less than four years (which might not necessarily coincide with the studies in theology, unless the particular law provided otherwise). Even though the canon does not provide for it, as occurred with c. 972 *CIC* 1917, I believe it appropriate, however, that, by virtue of c. 87 § 1, the diocesan bishop may also dispense with the obligation to remain at the seminary, as established in this canon.

The time begins to run with the admission, as established in c. 241 § 1, which is different from admission into orders, as provided for in c. 1034. The latter, a requirement prior to ordination to the diaconate or the priesthood, is a liturgical rite which, from a juridical point of view, already certifies a public recognition on the part of the ecclesiastical authority as to the suitability of the candidate and his vocation, while in the case of c. 241 § 1 (see commentary), we are only in the presence of an initial evaluation with the hope that it will be verified.

Insofar as the *place* of formation is concerned, it should be a legitimately erected seminary (cf. cc. 237ff). Even though *Pastores dabo vobis* 60 stresses that "[the seminary] should appear, above all, as *an educational community on the way*" (setting aside the possibility, therefore, as *CIC* also does, that it can be materially configured according to various modalities), the norms which provide for its internal structure (cf. cc. 239, 240), and also the need that a common life be practiced (cf. 245 § 2), demand a certain special unity.

3. Once the importance that the priestly formation takes place in a seminary has been shown (even though this does not imply that it should be pursued at that same seminary throughout its entire duration) § 2, which follows almost literally the text of c. 972 *CIC*/1917, provides that, in the case of legitimate residence outside the seminary, the candidate must be entrusted to a "pius and suitable" priest, who shall take care to ensure his spiritual life and discipline. This imposes on the diocesan bishop the obligation to provide what is needed in this regard, not only in the case of a possible dispensation from formation in the seminary, in accordance with § 1, but also for all those occasions in which the seminarian resides for longer or shorter periods of time outside the seminary.

236 **Aspirantes ad diaconatum permanentem secundum Episcoporum conferentiae praescripta ad vitam spiritualem alendam informentur atque ad officia eidem ordini propria rite adimplenda instruantur:**

1° iuvenes per tres saltem annos in aliqua domo peculiari degentes nisi graves ob rationes Episcopus dioecesanus aliter statuerit;

2° maturioris aetatis viri, sive caelibes sive coniugati, ratione ad tres annos protracta et ab eadem Episcoporum conferentia definita.

Those who aspire to the permanent diaconate are to be formed in the spiritual life and appropriately instructed in the fulfillment of the duties proper to that order, in accordance with the provisions made by the Bishops' Conference:

1° young men are to reside for at least three years in a special house, unless the diocesan Bishop for grave reasons decides otherwise;

2° men of more mature years, whether celibate or married, are to prepare for three years in a manner determined by the same Bishops' Conference.

SOURCES: 1°: *LG* 29; *AG* 16; *SDO* 6–10; SCCE Litt. circ., 16 iul. 1969; *AP* VII; *DPMB* 196
2°: *LG* 29; *AG* 16; *SDO* 14, 15; SCCE Litt. circ., 16 iul. 1969; *AP* VII; *DPMB* 196

CROSS REFERENCES: cc. 276 § 2, 3°, 281 § 3, 288, 1031 § 2, 1032 § 3, 1037, 1039

COMMENTARY

Davide Cito

The permanent diaconate

1. Analogously to what has been established in the preceding canon, the *CIC* establishes the obligation to provide a suitable formation for the permanent deacons.

The canon speaks in general terms; this is due not only to the fact that the function of establishing norms concerning the formation of candidates to this ministry has been referred to the Bishops' Conferences, but also because of the recent reintroduction of the permanent diaconate into the Latin Church, which requires, therefore, a period of discernment, so that the most suitable norms can be more precisely established.

In effect, despite the desire of the Council of Trent,[1] only since Vatican Council II was the diaconate considered to have autonomy, and not merely a stage prior to the priesthood.[2] It was *Ad gentes* 16, which established the possibility, where Bishops' Conferences deem it opportune, "that the order of the diaconate should be restored as a permanent state of life according to the norms of the Constitution on the Church" (*LG* 29). This was followed by *Sacrum diaconatus ordinem*, which provided for: *a*) attributing the function of instituting the permanent diaconate to the Bishops' Conferences, with the consent of the Roman Pontiff (I); *b*) the requirements of admission of candidates to the permanent diaconate and some general guidelines pertaining to their formation (II–IV); and *c*) the functions belonging to the permanent diaconate, identical in all other respects to those which the deacon carries out in preparation for the priesthood (V). A letter of the SCCE, which concerns, above all, doctrinal formation,[3] and later *Ad pascendum* completes the universal extra-codal norms.

2. The canon, while simultaneously entrusting to the Bishops' Conferences the function of handing down appropriate provisions regarding the formation of candidates to the permanent diaconate,[4] establishes two different modes, whether it involves young men ("iuvenes") or men of more mature years ("maturioris aetatis viri").

In the first case, which included persons between 22 and 32 years of age, by taking into account the three-year period which should precede the minimum age for admission into the sacred orders (cf. c. 1031 § 2), and in which the diaconate embraces a state of celibacy,[5] a stay of three years in a specific house is prescribed; however, the bishop has the faculty to decide otherwise for grave reasons.

On the other hand, included in the second group are those who, whether celibate or married, are older than 32 years of age. For the latter, a three-year period of formation is provided in a generic way.

Only through recourse to particular norms is it possible, therefore, to deal with the practical scope of this norm in sufficient breadth.

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1. Cf. COUNCIL OF TRENT, sess. XXIII, c. 17 *de reformatione*.
2. Cf. P. MCCASLIN-M.G. LAWLER, *Sacrament of service. A vision of the Permanent Diaconate today* (New York 1986), pp. 91–101; S. ZARDONI, *I diaconi nella Chiesa*, 2nd ed. (Bologna 1991), pp. 48–56.
3. SCCE, Litt. circ. *Com'è a conoscenza*, July 16, 1969, prot. N. 137/69, in *EV* III (Bologna 1977), nos. 1408–1412.
4. For the text of these particular norms, cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze episcopali complementare al CIC* (Milan 1990). For the most recent particular norms, cf. CBI "I diaconi permanenti nella Chiesa in Italia. Orientamenti e norme," June 1, 1993, in *Notiziario della Conferenza Episcopale Italiana* 6 (1993), pp. 151–176. (Editor's Note: For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.)
5. Cf. T. RINCÓN, commentary on c. 236, in *Pamplona Com.*

CITO

237 **§ 1. In singulis dioecesibus sit seminarium maius, ubi id fieri possit atque expediat; secus concredantur alumni, qui ad sacra ministeria sese praeparent, alieno seminario aut erigatur seminarium interdioecesanum.**

§ 2. Seminarium interdioecesanum ne erigatur nisi prius approbatio Apostolicae Sedis, tum ipsius seminarii erectionis tum eiusdem statutorum, obtenta fuerit, et quidem ab Episcoporum conferentia, si agatur de seminario pro universo eius territorio, secus ab Episcopis quorum interest.

§ 1. Where it is possible and advisable, each diocese is to have a major seminary; otherwise, students preparing for the sacred ministries are to be sent to the seminary of another diocese, or an inter-diocesan seminary is to be established.

§ 2. An inter-diocesan seminary may not be established unless the prior approval of the Apostolic See has been obtained, both for the establishment of the seminary and for its statutes. Approval is also required from the Bishops' Conference if the seminary is for the whole of its territory; otherwise, from the Bishops concerned.

SOURCES: § 1: cc. 1354 §§ 2 et 3, 1357 § 3; BENEDICTUS PP. XV, Let. *Saepe Nobis*, 30 nov. 1921 (*AAS* 13 [1921] 555–556); PIUS PP. XI, Let. *Officiorum omnium*, 1 aug. 1922 (*AAS* 14 [1922] 449–458); PIUS PP. XI, Enc. *Ad catholici sacerdotii*, 20 dec. 1935 (*AAS* 28 [1936] 44); SCSUS Litt. circ., 22 feb. 1963, I; PAULUS PP. VI, Let. *Summi Dei*, 4 nov. 1963 (*AAS* 55 [1963] 979–995); *OT* 4, 7; *RFIS* 20, 21; *DPMB* 193; IOANNES PAULUS PP. II, Let. *Magnus dies*, 8 apr. 1979 (*AAS* 71 [1979] 392)
§ 2: cc. 1354 § 3, 1357 § 4; SCPF Normae, 27 apr. 1934; SCSUS Normae, 25 ian. 1945; SCPF Normae, 1962; *OT* 7; *RFIS* 21; PCIDSVC Resp. II, 11 feb. 1972 (*AAS* 64 [1972] 397); *DPMB* 193

CROSS REFERENCES: cc. 235, 295

COMMENTARY

Davide Cito

Erection and types of major seminaries

1. Once the need for formation for the priesthood to take place in a seminary has been established (see c. 235 and commentary), the present canon offers certain instructional norms, whose object is to erect and classify these institutions.

The close link joining the candidate to the priesthood with the ecclesial community in whose service he is to be assigned and the bishop who is called upon to discern his vocation and to accompany him on his vocational path,[1] makes it particularly appropriate for a major seminary to exist in each diocese. However, even though this orientation has been recently stressed again,[2] various factors, one of which may be called to mind is the shortage in the number of candidates or of prepared educators, make the current discipline, unlike c. 1354 § 3 *CIC*/1917, provide for the obligatory nature of the erection of the diocesan seminary in those places where it is not only "possible" but also "appropriate," thereby leaving it to the diocesan bishops involved to judge the suitability of erecting them.

The canon later adds that "otherwise ['*secus*'], students … shall be sent to another seminary, or an inter-diocesan seminary is to be established." But the decision to send candidates to another seminary shall not be determined only by the absence of a diocesan seminary. By taking into account the needs of the Church or of the candidate himself, there may be other reasons which suggest it, such as missionary availability, for example,[3] or the opportunity for that the student to attend advanced institutes or university schools (cf. *RFIS* 85).

2. In addition to the diocesan seminary, the canon considers the possibility of establishing an inter-diocesan seminary. Inter-diocesan seminaries, provided for by the Council of Trent, with additional innovations made by the Pontiffs Pius X and Benedict XV with the institution of regional seminaries,[4] are regulated by cc. 1354 § 3 and 1357 § 4 *CIC*/1917, which

1. Cf. J. HERRANZ, *Studi sulla nuova legislazione della Chiesa* (Milan 1990), pp. 270–271.

2. Cf. CCE, "Direttive sulla preparazione degli educatori nei seminari," November 4, 1993, no. 81, in the supplement to *L'Osservatore Romano*, January 12, 1994, no. 8.

3. Cf. *PDV* 59; CCE "Direttive sulla preparazione degli educatori nei seminari...," cit., no. 82.

4. Cf. SCB, *Programma generale studiorum a Pio Pp. X approbatum pro omnibus Italiae Seminariis*, 1907; idem, *Normae ad instaurandum institutionem et disciplinam in Seminariis Italiae a Pio Pp. X approbatae*, January 18, 1908; BENEDICT XV, mp *Seminaria clericorum*, November 4, 1915 (cit. in A.M. PUNZI NICOLÒ, voz *Seminari* I, p. 3, in *Enciclopedia Giuridica*, Rome 1992); T. RINCÓN, commentary on c. 237, in *Pamplona Com.*

provide that their constitution, government and administration be governed by norms emanating from the Apostolic See. In Vatican Council II and in subsequent documents, the subject of inter-diocesan seminaries was again taken up, even though uniform terminology was not always used. Thus, in *Optatam totius* 7, we find, "inter-diocesan seminaries (regional, central or national)"; in *Presbyterorum Ordinis* 10, "international seminaries"; in *RFIS* 21 "inter-diocesan seminary (regional, central or national)." In c. 295, "national or international seminaries" are mentioned, while the canon now under study refers to the diocesan or inter-diocesan seminary, just as *Pastor Bonus* 113 § 3.

3. The current criteria used for suggesting a classification of seminaries are diverse, without doubt; however, from a juridical point of view, it strikes us that the most significant element needed to carry out a classification is that of the authority to erect and govern a seminary. In this sense, seminaries can be: *a)* diocesan, whenever the authority lies with a diocesan bishop or an ordinary equivalent to him; *b)* inter-diocesan, whenever, according to *PB* 113 § 3, the CCE establishes such seminaries, approves their statutes, and their governance is exercised by a plurality of bishops.[5]

In the category of inter-diocesan seminaries, more precise distinctions can be made, to the extent that they adopt a regional or national configuration, or simply as inter-diocesan.

Article 113 § 3 of *Pastor Bonus* modifies the provisions contained in the canon, now the subject of our commentary, insofar as the authority to erect inter-diocesan seminaries is concerned. In fact, it seems from the text of the canon that it should be understood that the competent authority in this regard for erecting an inter-diocesan seminary are the interested bishops or the bishops' conference, in the case of an inter-diocesan seminary for their entire territory, with the prior approbation of the Holy See.[6] Since *Pastor Bonus* has taken effect, this competence has been accorded to the CCE, which does not release, however, the interested bishops or the Bishops' Conference from the initiative of proposing the erection of an inter-diocesan seminary and for submitting its statutes for their approval.

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5. Cf. T. BERTONE, "La Congregazione per l'Educazione Cattolica (dei Seminari e degli Istituti di Studi)," in *La Curia Romana nella cost. ap. "Pastor bonus,"* (Vatican City 1990), p. 385.

6. Cf. T. RINCÓN, commentary on c. 237, in *Pamplona Com*; D. COMPOSTA, commentary on c. 237, in P.V. PINTO (Ed.), *Commento al Codice di Diritto Canonico* (Rome 1985); V. DE PAOLIS, "La formazione dei chierici," in *Il fedele cristiano* (Bologna 1989), pp. 122–123; D. MOGAVERO, "I ministri sacri o chierici," in *Il diritto nel mistero della Chiesa*, II, 2nd ed. (Rome 1990), pp. 94–95.

238 **§ 1. Seminaria legitime erecta ipso iure personalitate iuridica in Ecclesia gaudent.**

§ 2. In omnibus negotiis pertractandis personam seminarii gerit eius rector, nisi de certis negotiis auctoritas competens aliud statuerit.

§ 1. Seminaries that are lawfully established have juridical personality in the Church by virtue of the law itself.

§ 2. In the conduct of all its affairs, the rector acts in the person of the seminary, unless for certain matters the competent authority has prescribed otherwise.

SOURCES: § 1: c. 99
§ 2: c. 1368

CROSS REFERENCES: cc. 114, 116 § 2, 118, 237, 259, 260, 1281, 1480

COMMENTARY

Davide Cito

Juridical governance of seminaries

1. The canon confers juridical personality *ipso iure* on legitimately established seminaries. In the *CIC*/1917, the question was taken up, if only incidentally, in c. 99, and included seminaries among the non-collegial *personae morales*.

According to the norms regulating juridic personality (cf. cc. 114–116), seminaries should be included among public juridical persons, or, what amounts to the same thing, among those entities that "in the name of the Church and in accordance with the provisions of law, fulfill the specific task entrusted to them in view of the public good" (c. 116 § 1).

On the other hand, as a result of the silence in the canon, it becomes problematic to determine whether they belong to the category of *universitates personarum*, or instead, to *universitates rerum*. Added to this difficulty, already manifested by doctrine[1] (which at times wonders about the possibility of distinguishing with precision in the canonical system whether an entity is configured as an aggregate of persons or of things,) is

1. Cf. A.M. PUNZI NICOLÒ, voz art. "Persona giuridica (Diritto canonico)," in *Enciclopedia Giuridica*, XXIII (Rome 1990), p. 1.

the fact that, in this case we find ourselves with entities that possess relevance both within the sphere of canon and civil law, as a result of which the possibility exists that they may be configured juridically in different ways within each of these two spheres.

In this regard, the commentators of the *CIC*/1917 leaned towards a patrimonial vision of the seminary, and believed that the moral personality of the seminary ought to be attributed to the assets intended for the entity. They concluded, therefore, that the seminary was a *universitas rerum*[2] devoted to the sole purpose of the formation of the clergy. At the current time, there are still those who are guided in this direction,[3] even though, if we heed the juridical canonical configuration, it would seem more appropriate to the physiognomy of the seminary to consider the personal element as the prevailing one.

2. Recipients of the attribution of juridic personality are the "legitimately established" seminaries, without any other specified characteristic. Therefore, as the doctrine has affirmed,[4] the expression "seminaries" should include all types of existing seminaries, in other words, major, minor, diocesan, inter-diocesan (see commentary on c. 237), provided that they have been established as such.

In this sense, in fact, we could be asked whether the "analogous institutes" or the "similar institutes," discussed in c. 234 (see commentary) are included in the category of seminaries. For some, the response is clearly in the affirmative, provided that it involves institutions that pursue a vocational end.[5] But this does not seem entirely satisfactory if we take into account that, as the doctrine has stressed,[6] the *CIC* has classified, with the generic aim of promoting vocations, those entities that are distinguished from each other not only by their juridical configuration, but also by the same specific aim, in other words, those institutions that are exclusively intended to cultivate the seeds of a vocation, and those others whose purpose, while still open to this possibility, consists, above all, in imparting a religious formation. In this sense, for purposes of the attribution *ipso iure* of juridic personality, it seems more consistent with the precepts established in the canon to adopt a restricted concept of seminary, in short, as an institution directed at cultivating the incipient vocation.

3. Consistent with c. 118, this canon, in § 2, attributes to the rector the duty of representing the seminary. This involves the status of legal rep-

2. Cf. F.X. WERNZ-P. VIDAL, *Ius canonicum*, II, 3rd ed. (Rome 1943), p. 37; A. VERMEERSCH-I. CREUSEN, *Epitome iuris canonici* I, 7th ed. (Mechlin-Rome 1949), pp. 201–202.

3. Cf. V. DE PAOLIS, "La formazione dei chierici," in *Il fedele cristiano* (Bologna 1989), p. 125.

4. Cf. T. RINCÓN, commentary on c. 238, in *Pamplona Com.*

5. Cf. L. CHIAPPETTA, commentary on c. 238, *Il Codice di Diritto Canonico*, I (Naples 1988).

6. Cf. V. DE PAOLIS, "La formazione dei chierici...," cit., pp. 120–121.

resentation which is to be exercised within the canonical scope as well as the civil one,[7] and which is usually extended "to the conduct of all its affairs ... unless for certain matters the competent authority has prescribed otherwise." It follows from this that the rector is empowered to act on behalf of the seminary in all acts of ordinary and extraordinary administration obviously with observing the requirements of validity, provided for in universal law for acts of extraordinary administration (cf. c. 1281).

Possible restrictions on the power of the rector to act as representative ought to be established by the competent authority and circumscribed to "certain matters." This demands that, in order to guarantee juridical security before third parties, these issues should be stated in a clear manner, either in the statutes, or in the documents *ad casum*. The competent authority will be the diocesan bishop in the case of diocesan seminaries; on the other hand, for an inter-diocesan seminaries, it will be those bishops concerned. Although in this latter case, problems could arise in regard to the *formation of the will* of the authority concerned.[8] In short, while the Code is silent about this, it would be necessary to specify with precision those modes through which the bishops concerned could come to formulate a binding decision for all parties in regard to those matters that have been entrusted to them.

7. Cf. CCE, "Direttive sulla preparazione degli educatori nei seminari," November 4, 1993, no. 43, in the supplement to *L'Osservatore Romano* , January 12, 1994, no. 8.

8. Cf. A.M. PUNZI NICOLÒ, voz "Persona giuridica (Diritto canonico)...," cit., p. 3.

239 **§ 1. In quolibet seminario habeantur rector, qui ei praesit, et si casus ferat vice-rector, oeconomus, atque si alumni in ipso seminario studiis se dedant, etiam magistri, qui varias disciplinas tradant apta ratione inter se compositas.**

§ 2. In quolibet seminario unus saltem adsit spiritus director, relicta libertate alumnis adeundi aliossacerdotes, qui ad hoc munus ab Episcopo deputati sint.

§ 3. Seminarii statutis provideantur rationes, quibus curam rectoris, in disciplina praesertim servanda, participent ceteri moderatores, magistri, immo et ipsi alumni.

§ 1. In all seminaries there is to be a rector who presides over it, a vice-rector, if circumstances warrant this, and a financial administrator. Moreover, if the students follow their studies in the seminary, there are to be professors who teach the various subjects in a manner suitably coordinated between them.

§ 2. In every seminary there is to be at least one spiritual director, though the students are also free to approach other priests who have been deputed to this work by the Bishop.

§ 3. The seminary statutes are to determine the manner in which the other moderators, the professors and indeed the students themselves, are to participate in the rector's responsibility, especially in regard to the maintenance of discipline.

SOURCES: § 1: c. 1358; SCSUS Let., 8 oct. 1921, II; SCSUS Let., 26 maii 1928; *OT* 5; *RFIS* 27–31
§ 2: c. 1358; SCSUS Let., 8 oct. 1921, II; SCSUS Let., 26 maii 1928; SCSUS Let., 3 maii 1947, I; *RFIS* 27, 55; *DPMB* 192
§ 3: c. 1359, PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 23 sep. 1950 (*AAS* 42 [1950] 686); SCCE Litt. circ., 7 mar. 1967; SCCE Litt. circ., 23 maii 1968; PAULUS PP. VI, Alloc., 27 mar. 1969 (*AAS* 61 [1969] 253–256); *RFIS* Introductio 2, 24, 29, 38

CROSS REFERENCES: cc. 243, 259 § 1, 246 § 4, 260–261

COMMENTARY

Davide Cito

Internal governance of the seminary

1. The canon describes the principal offices intended to direct the life of the seminary. The holders of these offices are described as "those most directly collaborating with the Bishop in his task of forming the clergy for his diocese,"[1] because the bishop is always "the first representative of Christ in priestly formation" (*PDV* 65).

The great diversity of situations and dimensions which different seminaries could offer (see commentary on c. 237) justifies the fact that the canon is limited to presenting a minimum list of offices, leaving it to particular legislation to make a more specific determination. In this sense, both *RFIS* 27, as well as the *Guidelines on the Preparation of Educators in the Seminary* (no. 45)[2] provide, together with the persons indicated in the canon, (to whom should also be added the dean of studies, as contemplated in c. 261 § 2) for other persons who collaborate, such as the person responsible for pastoral activities, the librarian, the prefect of discipline, and those responsible for formation.

Among the various offices provided for in the legislation of the code, it is necessary to distinguish the obligatory from the optional ones. Worthy of consideration among the first category are: the rector, the financial administrator, at least one spiritual director, confessors (see commentary on c. 240), the dean of studies (see commentary on cc. 254 and 261), and professors, in the event that studies are pursued at the same seminary. All other offices, optional by nature, depend on the dimensions and specific structure of each seminary.

2. The appointment of superiors at the seminary devolves upon the bishop or bishops concerned (cf. c. 259 § 2; *RFIS* 28). The statutes of the seminary may specify more precisely the manner for appointments and dismissals from each office; by always keeping in mind that the juridical relationship that unites the bishop and the superiors of the seminary, and, in particular, the rector, is of the fiduciary type; therefore, it is necessary to ensure that the bishop has sufficient discretion in choosing those who will collaborate with him, always preserving the just autonomy required for performance of the task entrusted to him.

1. CCE, "Direttive sulla preparazione degli educatori nei seminari," November 4, 1993, no. 43, in the supplement to *L'Osservatore Romano* January 12, 1994, no. 8.
2. Ibid.

Since it is not always possible to guarantee that each office be filled by a different person, it must be assured that there are no incompatibilities in discharging various offices within the seminary. In this regard, the *CIC*/1917 explicitly established in c.1358 that the rector and the financial administrator would be different persons. In addition, according to c. 1361 § 3, incompatibility between the office of confessor and that of other superiors in the seminary could be inferred. At the current time, the *CIC* does not directly establish any incompatibility whatsoever; however, in regard to the provisions set forth in cc. 240 § 2 and 1051,1°, when taken together, it may be concluded that the offices of spiritual director and of confessor are incompatible with the other positions. But, insofar as the office of financial administrator is concerned, it does not seem that this conclusion could be adopted in a restricted sense, even though there are those who continue to consider the abolished discipline as still valid.[3]

3. Within the framework of this commentary, principal offices will be examined:

a) *Rector.* "He represents the Bishop; he is primarily responsible for the life of the seminary ... He follows and promotes the formation of students in all aspects, seeking their harmonious and mutual integration. By adopting and evaluing the advice and assistance of those collaborating with him, he bears responsibility for the summary judgment that he must convey to the bishop about the suitability for admission into the seminary, along the various phases on the educational path and toward holy orders. ... It is incumbent upon him to ensure the unity of guidance, in harmony with the positions that the bishop and the Church have adopted, and promote their application with the widest collaboration possible from everyone."[4] Even though the canon does not explicitly indicate the prerequisites for suitability, they are deduced from the set of functions that are attributed to him. Whenever he begins to exercise his position, he must make a profession of faith (cf. c. 833,6°) and swear an oath of fidelity.[5]

b) *Vice-rector.* If this office has been provided for, the vice-rector works alongside the rector and assists him "in the areas of seminary life that are assigned to him, and he replaces him in the event of absence."[6] The statutes of the seminary should specify his functions.

c) *Financial administrator.* He assists the rector with financial administration.

d) *Professors* (see commentary on c. 253).

3. Cf. L. CHIAPPETTA, *Il Codice di diritto canonico. Commento giuridico-pastorale*, I (Naples 1988), p. 312.

4. CCE, "Direttive sulla preparazione degli educatori nei seminari...," cit., no. 43.

5. Cf. CDF, *Professio fidei et iusiurandum fidelitatis in suscipiendo officio nomine Ecclesiae exercendo*, in *AAS* 81 (1989), pp. 104–106.

6. CCE, "Direttive sulla preparazione degli educatori nei seminari...," cit., no. 45.

e) *Dean of Studies* (see commentary cc. 254 and 261).

f) *Spiritual director.* Paragraph 2 of the canon provides that there be "at least one spiritual director." The director spiritus (who should not be confused with the *moderator vitae spiritualis* of c. 246 § 4 (see commentary), even though the two figures may be one and the same in practice) is entrusted three areas of duties: "[*a*] responsibility for the spiritual life of the seminarians in the internal forum; [*b*] guidance and coordination of various exercises of piety and in the liturgical life of the college. [*c*] He is also the coordinator of the other priests authorized by the bishop to offer spiritual guidance to the students, and also that of the confessors, in order to ensure a common criteria for discerning the vocation."[7]

The spiritual director is supported by other priests designated by the bishop, who may or not be qualified as *directores spiritus*, whom the seminarian may be free to approach.

As the most recent doctrine has again stressed,[8] the solution adopted by the canon tends to harmonize two principles: unity in spiritual guidance insofar as the discernment of vocations is concerned and the freedom of seminarians. Certainly, insofar as the first of these principles is concerned, the statutes of the seminary should specify, in the event that more than one *director spiritus* were to be appointed, what the sphere of competence for each of them is.

4. Canon 1359 *CIC* 1917 established that there were to be two *coetus deputatorum*, one for discipline and the other for the administration of goods to assist the bishop in the governance of the seminary, even though the obligations of these two *coetus* were not precisely determined.[9] Currently § 3 of the canon does not provide for their existence; it has been left to the statutes of the seminary to determine the modes through which all components in the seminary (including the students) share in the responsibility of the rector, especially in regard to discipline. If the seminary presents itself "above all as *an educational community in progress*" (*PDV* 60), it is necessary that each of its members play an active role in that community and not merely be a passive recipient, even though there may be different practical solutions for implementing that shared responsibility.

7. Ibid., no. 44.

8. Cf. T. RINCÓN, "Sobre algunas cuestiones canónicas a la luz de la Exh. Apost. 'Pastores dabo vobis'," in *Ius Canonicum* 33 (1993), pp. 356–360.

9. Cf. F.X. WERNZ-P. VIDAL, *Ius canonicum*, IV, II (Rome 1935), pp. 116–117.

240 **§ 1. Praeter confessarios ordinarios, alii regulariter ad seminarium accedant confessarii, atque, salva quidem seminarii disciplina, integrum semper sit alumnis quemlibet confessarium sive in seminario sive extra illud adire.**

§ 2. In decisionibus ferendis de alumnis ad ordines admittendis aut e seminario dimittendis, numquam directoris spiritus et confessariorum votum exquiri potest.

§ 1. Besides ordinary confessors, other confessors are to come regularly to the seminary; while maintaining seminary discipline, the students are always free to approach any confessor, whether inside or outside the seminary.

§ 2. In deciding about the admission of students to orders, or their dismissal from the seminary, the vote of the spiritual director and the confessors may never be sought.

SOURCES: § 1: c. 1361 §§ 1 et 2; *RFIS* 55; *DPMB* 192; SCCE Instr. *In ecclesiasticam,* 3 iun. 1979, 35, 36
§ 2: c. 1363 § 2; PIUS PP. XI, Enc. *Ad catholici sacerdotii,* 20 dec. 1935 (*AAS* 28 [1936] 41); SCSUS Let., 3 maii 1947; SCDS Litt. circ., 27 dec. 1955, 1

CROSS REFERENCES: cc. 246 § 4, 983 § 1, 984, 985, 1388

COMMENTARY

Davide Cito

1. Paragraph 1 is inspired by c. 1361 *CIC*/1917, but it extends to the seminarian the freedom to choose his confessor. In fact, the Pio-Benedictine Code established that ordinary and extraordinary confessors were to be designated for each seminary, whom the student could freely approach, "salva Seminarii disciplina." Currently, instead, in addition to the confessors expressly designated as ordinary and extraordinary, it prescribes that the seminarian be offered wide freedom in having recourse to any confessor, in other words, to a validly ordained priest, who possesses the faculty to hear confessions (cf. c. 966), provided that the discipline of the seminary is maintained.

This entails that recourse to a confessor who is not included among those so designated cannot constitute, in and of itself, a reason for a

negative judgment on the part of the superiors. In addition, it presumes that a disturbance in the discipline of the seminary which would justify the prohibition against recourse to a confessor other than those so designated ought to be proportionately grave.

The sole limitation provided for in the choice of confessor is that indicated in c. 985 and affects the rector of the seminary, whom the students may approach only in special cases, and when they ask spontaneously.

2. Paragraph 2 also extends to the spiritual director what has already been provided for in c. 1361 § 3 *CIC*/1917 about the prohibition against seeking the opinion of confessors regarding admission into sacred orders or dismissal of students from the seminary.

This widening of scope reinforces the separation between the internal and external forum (which has been recently recommended again (cf. *RFIS* 27; *PDV* 66)), and juridically protects the moral obligation of confidentiality that emerges from the qualified confidential relationship established between the student and the spiritual director.

The individuals bound by this norm are confessors and the spiritual director. So as to remove even the faintest suspicion of a possible violation, whether direct or indirect, of the sacramental seal, which constitutes a very grave offense, punishable according to the terms of c. 1388, included in the category of confessor is not only the one who, in fact, may be the confessor of the seminarian, but also all those who have been designated as ordinary or extraordinary confessors of the seminary.

Insofar as the spiritual director is concerned, the scope of the norm encompasses the spiritual director or directors appointed for the seminary, and to the person chosen by the student as *director spiritus*, in accordance with c. 239 § 2.

The prohibition contained in the canon not only prevents superiors from seeking the opinion of these persons, but also prevents confessors or the spiritual director from spontaneously giving their opinion in the matter.

Judging by this norm, it could be inferred, as already has been shown,[1] that the knowledge which the rector has about the suitability of the candidate, about whom he has been called to evaluate (cf. c. 1051,1°), runs the risk of being circumspect about elements which are external. It must be considered, however, that a moral obligation is imposed on the student to convey to the rector the judgment of the spiritual director about his suitability and about any other significant fact that could exert an influence on the requirements demanded to receive sacred orders. In any event, even though the public good of the Church is involved, the

1. Cf., e.g., G. GHIRLANDA, *Il diritto nella Chiesa mistero de comunione* (Ciniselo Balsamo-Rome 1990), pp. 131–132.

freedom of conscience of the person should be protected in the first place (cf. *VSp* 31), even if this may run the risk that the information conveyed might possibly be incomplete.

In addition, this can be verified by what is stated in no. 69 of the *PDV*: "Lastly, we must not forget that the candidate himself is a necessary and irreplaceable agent in his own formation ... No one can replace us in the responsible freedom that we have as individual persons."

241 **§ 1. Ad seminarium maius ab Episcopo dioecesano admittantur tantummodo ii qui, attentis eorum dotibus humanis et moralibus, spiritualibus et intellectualibus, eorum valetudine physica et psychica necnon recta voluntate, habiles aestimantur qui ministeriis sacris perpetuo sese dedicent.**

§ 2. Antequam recipiantur, documenta exhibere debent de susceptis baptismo et confirmatione aliaque quae secundum praescripta institutionis sacerdotalisRationis requiruntur.

§ 3. Si agatur de iis admittendis, qui ex alieno seminario vel instituto religioso dimissi fuerint, requiritur insuper testimonium respectivi superioris praesertim de causa eorum dimissionis vel discessus.

§ 1. The diocesan Bishop is to admit to the major seminary only those whose human, moral, spiritual and intellectual gifts, as well as physical and psychological health and right intention, show that they are capable of dedicating themselves permanently to the sacred ministries.

§ 2. Before they are accepted, they must submit documentation of their baptism and confirmation, and whatever else is required by the provisions of the Programme of priestly formation.

§ 3. If there is question of admitting those who have been dismissed from another seminary or religious institute, there is also required the testimony of the respective superior, especially concerning the reason for their dismissal or departure.

SOURCES: § 1: c. 1363 § 1; PIUS PP. XI, Enc. *Ad catholici sacerdotii*, 20 dec. 1935 (*AAS* 28 [1936] 39, 40), PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 23 sep. 1950, II (*AAS* 42 [1950] 684–685); SCSUS Litt. circ., 27 sep. 1960, I, 1–5; SCHO Monitum *Cum comperto*, 15 iul. 1961, 4 (*AAS* 53 [1961] 571); PAULUS PP. VI, Let. *Summi Dei*, 4 nov. 1963 (*AAS* 55 [1963] 987–988); *OT* 6; PAULUS PP. VI, Enc. *Sacerdotalis caelibatus*, 24 iun. 1967, 62–72 (*AAS* 59 [1967] 682–686); *RFIS* 11, 39; SCCE Normae, 11 apr. 1974, 38
§ 2: c. 1363 § 2§ 3: c. 1363 § 3; SCR et SCSUS Decr. *Consiliis initis*, 25 iul. 1941 (*AAS* 33 [1941] 371); SCSUS Resp., 8 mar. 1945; SCSUS Litt. circ., 12 ian. 1950; SCSUS Decr. *Sollemne habet*, 12 iul. 1957 (*AAS* 49 [1957] 640); SCPF Resp. 28 oct. 1957; SCPF Resp., 11 ian. 1958; SCSUS Resp., 6 feb. 1958; SCSUS Resp., 19 mar. 1963; SCSUS Resp., 12 apr. 1967

CROSS REFERENCES: cc. 234 § 2, 642, 1051, 1°

COMMENTARY

Davide Cito

Admission of seminarians

1. Even though "the history of every priestly vocation, as indeed of every Christian vocation, is the history of an ineffable dialogue between God and human beings, between the love of God who calls and the freedom of individuals who respond lovingly to him" (*PDV* 36), since a vocation "exists in the Church and for the Church ... it is the task of the Bishop or the competent superior not only to examine the suitability and the vocation of the candidate but also to recognize it" (*PDV* 35).

From a juridical point of view, this vocational dynamic is configured as an activity which considers the candidate and the competent ecclesiastical authority as primary protagonists, and which unfolds in a series of juridical acts that produce rights and duties between both parties.

An act proper to this action is *admissio* into the major seminary, to which the three paragraphs of the canon, which is now the subject of our commentary, are devoted.

2. The diocesan bishop (or the bishops concerned in the case of an inter-diocesan seminary) on whom the seminary depends is the individual qualified to grant admission into the major seminary, not therefore, the ordinary of that locality or the bishop of the diocese of the domicile from which the candidate comes.

The accepting bishop, who is called upon to make a judgment regarding suitability of the candidate, even though it may not be definitive, shall normally consider the opinions of those persons among them is the rector of the seminary,[1] who, through their knowledge of the candidate and their prudent judgment, can offer appropriate information so as to make an evaluation in his regard.

This compiled information and the subsequent judgment about admission into the seminary assume a level of marked importance; it is true that admission does not, in any way whatsoever, carry a definitive judgment about the vocation of the candidate, but rather expresses a first favorable opinion for the Church and for the candidate himself. As a result, as indicated in *Pastores dabo vobis* 62, admission into the major seminary may be preceded by a preparatory period that constitutes "a certain prior preparation."

1. Cf. CCE, "Direttive sulla preparazione degli educatori nei seminari," November 4, 1993, no. 43, in the supplement to *L'Osservatore Romano*, January 12, 1994, no. 8.

3. Insofar as the selection criteria are concerned for those about whom the judgment of admission into the seminary is to be formulated, the canon, inspired in *Optatam totius* 6; also cf. *RFIS* 39, establishes that the following be verified: *a*) human, moral, spiritual, and intellectual gifts;[2] *b*) physical and psychological health; *c*) right intention. This same conciliar Decree invites us to proceed with this selection "notwithstanding the regrettable shortage of priests, [with] due strictness" (*OT* 6).

On the other hand, the requirement for legitimate birth, which was established in c. 1363 *CIC*/1917, is no longer in effect.[3]

In addition to the verification of the qualities indicated under § 1, the canon establishes in § 2 prior presentation of certificates of baptism and of confirmation, as well as other documents eventually required by the provisions set forth in particular norms.

Finally, insofar as the admission of seminarians who have been dismissed from other seminaries or religious institutes is concerned, a declaration of the superior *a quo* concerning the reasons for dismissal or departure is required. The subject (which was regulated by c. 1363 in the *CIC*/1917 and subsequently by the decrees *Consiliis initis*, of July 25, 1941,[4] and *Sollemne habet*, of July 12, 1957),[5] even though it no longer considers the need for recourse to the Holy See,[6] continues to present particularly delicate nuances[7] and imposes upon the accepting bishop a special duty to inquire about the reasons for dismissal or departure (*RFIS* 39), even though it leaves unchanged the power which he has to admit a candidate into the major seminary.

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2. Cf. *PDV*, ch. V, 1 ("Las dimensiones de la formación sacerdotal").

3. Cf. L. CHIAPPETTA, commentary on c. 241, in *Il Codice di diritto canonico. Commento giuirdico-pastorale*, I (Naples 1988), p. 315; T. RINCÓN, commentary on c. 241, in *Pamplona Com.*

4. Cf. *AAS* 33 (1941), p. 371.

5. Cf. *AAS* 49 (1957), p. 640.

6. Cf. T. RINCÓN, commentary on c. 241, in *Pamplona Com.*

7. CCE, *Litt. circ. Ci permettiamo* to pontifical representatives regarding the admission of ex-seminarians to another seminary, prot. no. 575/83, October 9, 1986, in *EV* X (Bologna 1990), nos. 949–952.

242 **§ 1. In singulis nationibus habeatur institutionis sacerdotalis Rationale, ab Episcoporum conferentia attentis quidem normis a suprema Ecclesiae auctoritate latis, statuenda et a Sancta Sede approbanda novis quoque adiunctis, approbante item Sancta Sede, accommodanda, qua institutionis in seminario tradendae definiantur summa principia atque normae generales necessitatibus pastoralibus uniuscuiusque regionis vel provinciale, aptatae.**

§ 2. Normae Rationis, de qua in § 1, serventur in omnibus seminariis, tum dioecesanis tum interdioecesanis.

§ 1. In each country there is to be a Programme of priestly formation. It is to be drawn up by the Bishops' Conference, taking account of the norms issued by the supreme ecclesiastical authority, and it is to be approved by the Holy See; moreover, it is to be adapted to new circumstances, likewise with the approval of the Holy See. This Programme is to define the overall principles governing formation in the seminary and the general norms which take account of the pastoral needs of each region or province.

§ 2. The norms of the Programme mentioned in § 1 are to be observed in all seminaries, whether diocesan or inter-diocesan.

SOURCES: § 1: *OT* 1; PAULUS PP. VI, Alloc., 27 mar. 1969 (*AAS* 61 [1969] 253–256); SCCE Litt. circ., 12 oct. 1966; *RFIS* 1; *DPMB* 191
§ 2: *OT* 1; *RFIS* 2

CROSS REFERENCES: cc. 241 § 2, 243, 249, 252 § 3, 260, 261, 455 § 1, 659 § 3

COMMENTARY

Davide Cito

Plan of priestly formation

There exists "an essential aspect of the priest that does not change: the priest of tomorrow, no less than the priest of today, must resemble Christ"; but "it is equally certain that the life and ministry of the priest must also adapt to every age and circumstance of life" (*PDV* 5).

The wide diversity in ecclesial situations and the need that priestly formation, even though it is oriented towards a common identity of the

presbyter, knows how to adapt itself to the different conditions of life and culture, justifies the fact that, together with legislation which is universal in character, there exists particular norms adapted to the concrete requirements of each situation.

Therefore, the canon which we are now examining, by readopting a conciliar directive contained in *Optatam totius* 1, orders Bishops' Conferences to issue their own *Rationale* regarding priestly formation, to be observed in the diocesan and inter-diocesan seminaries which fall under the scope of its competence.

This involves a requirement, obligatory in character, with which the majority of the existing Conferences of Bishops have already complied at the current time.[1] If this national *Rationale* is lacking for the formation of priests, the norms emanating from the Apostolic See and those belonging to each seminary are to be directly applied (cf. c. 243).

The national *Rationale* requires approval of the Holy See, as well as for any subsequent modification. The provisions contained in the *Rationes* approved before the *CIC* took effect are still valid to the extent they do not contradict the provisions contained in the Code.

The norm of reference for the national *Rationale* was its constitution in the *Rationale fundamentalis institutionis sacerdotalis*, published on March 19, 1985, to replace the previous *Rationale* of January 6, 1970.

The national *Rationale* should contain "the essential principles and general norms for formation in the seminary." As has been highlighted with precision,[2] the fact that it should be based on norms emanating from the Holy See demands that those "essential principles" always be inspired in documents of the Apostolic See, allowing for the possibility, on the other hand, of adapting the "general norms" to pastoral needs. In this way, there exists flexibility in order to respond to different ecclesial situations in a timely manner, within an essential physiognomy which guarantees the common priestly identity in the Church.

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1. Cf. J.A. Barry, "The implementation by Conferences of the Conciliar Decree 'Optatam totius'," in *Studia Canonica* 18 (1984), pp. 291–384; J.T. Martín de Agar, *Legislazione delle Conferenze episcopali complementare al CIC* (Milan 1990), p. 757. (Editor's Note: For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.)
2. Cf. V. de Paolis, "La formazione dei chierici," in *Il fedele cristiano* (Bologna 1989), pp. 128–129.

243 **Habeat insuper unumquodque seminarium ordinationem propriam, ab Episcopo dioecesano aut, si de seminario interdioecesano agatur, ab Episcopis quorum interest, probatam, qua normae institutionis sacerdotalis Rationis adiunctis particularibus accommodentur, ac pressius determinentur praesertim disciplinae capita quae ad alumnorum cotidianam vitam et totius seminarii ordinem spectant.**

In addition, each seminary is to have its own rule, approved by the diocesan Bishop or, in the case of an inter-diocesan seminary, by the Bishops concerned. In this, the norms of the Programme of priestly formation are to be adapted to the particular circumstances and developed in greater detail, especially on points of discipline affecting the daily life of the students and the good order of the entire seminary.

SOURCES: c. 1357 §3; SCSUS Litt. circ., 27 sep. 1960, II, 4; *OT* 7–11; PAULUS PP. VI, Enc. *Sacerdotalis caelibatus*, 24 iun. 1967, 66 (*AAS* 59 [1967] 683); SCCE Litt. circ., 23 maii 1968; *RFIS* 2, 25; *DPMB* 191; SCCE Normae, 11 apr. 1974, 74; SCCE Litt. circ., 6 ian. 1980, p. 20

CROSS REFERENCES: cc. 242, 260, 261

COMMENTARY

Davide Cito

Each seminary has its own rule

This canon provides that each seminary is to have its own rule that determines "in a more precise way matters, above all, of a disciplinary nature affecting the daily life of the students." In such a rule the principles contained in the national Rationale (cf. c. 242) are to be adapted to particular situations.

This involves, therefore, a norm which is primarily disciplinary in nature, which should be approved by the diocesan bishop or by those bishops concerned, if it involves an inter-diocesan seminary.

As the activity of formation, while inspired by the guidelines contained in documents issued by the Apostolic See, the Conferences of Bishops or bishops, is directed at concrete persons in specific situations, it is necessary that the rule of the seminary, while it may have an understand-

able flexibility, should discipline, as clearly and as precisely as possible, all aspects comprising the dimensions of priestly formation, which have already been set forth in a generic way in the *CIC* and in other normative documents.

While it establishes that the rule of the seminary is directed at specifying as precisely as possible those questions which are primarily disciplinary that affect the life of the students, this canon stresses the importance that this same rule should contain the prescriptions needed for the students to learn to cultivate a lifestyle consistent with the priestly ministry.

Purely by way of illustration, the following subjects could be singled out: schedule of the day, with special emphasis on times for prayer or for common activities (meetings, talks, etc.); time for study and for silence; distribution of assignments stimulating the participation of everyone towards the smooth operation of the house; practical norms of good manners which help to promote proper and respectful personal relationships.

All of this, which, at first glance, might seem to be a restriction on the freedom of seminarians, becomes indispensable, because during the period of formation in the seminary, the students must be capable of "making sacrifices and of observing intelligent and loyal personal discipline, accompanied by interior freedom."[1]

1. CCE, Litt. *The document*, January 6, 1980, in *EV* VII (Bologna 1985), no. 79.

244 **Alumnorum in seminario formatio spiritualis et institutio doctrinalis harmonice componantur, atque ad id ordinentur, ut iidem iuxta uniuscuiusque indolem una cum debita maturitate humana spiritum Evangelii et arctam cum Christo necessitudinem acquirant.**

The spiritual formation and the doctrinal instruction of the students in a seminary are to be harmoniously blended. They are to be so planned that the students, each according to his talents, simultaneously develop the requisite human maturity and acquire the spirit of the Gospel and a close relationship with Christ.

SOURCES: PIUS PP. XI, Enc. *Ad catholici sacerdotii*, 20 dec. 1935 (*AAS* 28 [1936] 23–33); SCSUS Litt. circ., 2 feb. 1945; SCSUS Let., 7 mar. 1950 (*AAS* 42 [1950] 836–840); PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 23 sep. 1950, III (*AAS* 42 [1950] 689–691); SCSUS Litt. circ., 5 iun. 1959; IOANNES PP. XXIII, Alloc., 29 iul. 1961 (*AAS* 53 [1961] 559–565); *OT* 4, 8 11; *RFIS* 14, 44, 45, 51, 76, 91; *DPMB* 195; SCCE Litt. circ., 22 feb. 1976, 22, 25, 38, 73; SCCE Litt. circ., 6 ian. 1980

CROSS REFERENCES: cc. 242–243, 245–252, 254–258

COMMENTARY

Davide Cito

Spiritual formation and doctrinal preparation of the students

1. Since the specific purpose of the seminary is "the vocational accompanying of future priests, and therefore the discernment of a vocation, the help to respond to it and the preparation to receive the sacrament of Orders with its own graces and responsibilities, by which the priest is configured to Jesus Christ, Head and Shepherd, and is enabled and committed to share the mission of salvation in the Church and in the world" (*PDV* 61), it follows that the *CIC* devotes a good part of this chapter I, based on the foundation provided by *Optatam totius* 8–20, to determine with greater precision the content of the right-duty of formation which is imposed on those individuals comprising the community of the seminary: educators and students.

As has been accurately observed, these prescriptions, often more exhortative in nature than normative, "constitute basic norms, guidelines,

and, at times, legal minimums which should be developed and completed by particular legislation,"[1] (in other words, in the national *Rationes* (cf. 242), in the statutes and norms (cf. c. 244) of each particular seminary).

2. The canon we are now examining, drawn from *Optatam totius* 8 and reaffirmed by *RFIS* 45, traces in a synthetic way: *a*) the aims of formation in the seminary; *b*) the aspects of this formation; *c*) the various ways in which it is taught.

a) *Aims of formation*: It should lead the students to acquire "the spirit of the Gospel and a deep relationship with Christ," which should awake the duty in educators to pay particular attention to the interior life of students, fostering those activities directed towards this end in all other respects, as specified in c. 246. On the other hand, a significant indicator of the suitability of a candidate for the priesthood and evidence of his right intention (cf. c. 241 § 1) would be the persistence that he shows towards an ever deeper internal maturation.

b) *Dimensions of formation in the seminary*: The canon stresses, above all, the spiritual dimension and doctrinal teaching; it mentions at the end the need for "requisite human maturity." Connecting this canon with c. 255, as it pertains to the *pastoral character* of the entire process of formation, four dimensions of formation in the seminary can be identified, as *Pastores dabo vobis* indicates in all other respects (cf. ch. V, I), which are closely linked together: human, spiritual, intellectual and pastoral. Among them, the human formation serves as an inescapable basis for all other aspects: "The whole work of priestly formation would be deprived of its necessary foundation if it lacked a suitable human formation" (*PDV* 43).[2]

c) *Kinds of formation*: The various aspects of formation in the seminary should not be considered as autonomous elements, independent of each other, but they need to be "harmoniously coordinated."[3] This requires, on the part of the superiors in the seminary, and in particular the rector, the duty to ensure that the different activities are closely connected with each other and that they are directed towards a common educational project (*RFIS* 29).

1. T. RINCÓN-PÉREZ, commentaries on cc. 244–258, in *Pamplona Com.*
2. Cf. A. DEL PORTILLO, *Consacrazione e missione del sacerdote* (Milan 1990), pp. 11–22.
3. J. SARAIVA MARTINS, "La formazione dei Sacri Ministri secondo il nuovo Codice di Diritto Canonico," in *Seminarium* 33 (1993), no. 3, p. 416.

245 **§ 1. Per formationem spiritualem alumni idonei fiant ad ministerium pastorale fructuose exercendum et ad spiritum missionalem efformentur, discentes ministerium expletum semper in fide viva et in caritate ad propriam sanctificationem conferre; itemque illas excolere discant virtutes quae in hominum consortione pluris fiunt, ita quidem ut ad aptam conciliationem inter bona humana et supernaturalia pervenire valeant.**

§ 2. Ita formentur alumni ut, amore Ecclesiae Christi imbuti, Pontifici Romano Petri successore humili et filiali caritate devinciantur, proprio Episcopo tamquam fidi cooperatores adhaereant et sociam cum fratribus operam praestent; per vitam in seminario communem atque per amicitiae coniunctionisque necessitudinem cum aliis excultam praeparentur ad fraternam unionem cum dioecesano presbyterio, cuius in Ecclesiae servitio erunt consortes.

§ 1. Through their spiritual formation students are to be fitted for the fruitful exercise of the pastoral ministry, and are to be inculcated with a sense of mission. They are to learn that a ministry which is always exercised with lively faith and charity contributes effectively to their personal sanctification. They are to learn to cultivate those virtues which are highly valued in human relationships, in such a way that they can arrive at an appropriate harmony between human and supernatural values.

§ 2. Students are to be so trained that, filled with love for Christ's Church, they are linked to the Roman Pontiff, the successor of Peter, in humble and filial charity, to their own Bishop as his faithful co-workers, and to their brethren in friendly co-operation. Through the common life in the seminary, and by developing relationships of friendship and of association with others, they are to be prepared for the fraternal unity of the diocesan *presbyterium*, in whose service of the Church they will share.

SOURCES: §1: PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 23 sep. 1950, III (*AAS* 42 [1950] 689–690); SCSUS Litt. circ., 27 sep. 1960; IOANNES PP. XXIII, Alloc., 29 iul. 1961 (*AAS* 53 [1961] 559–565); PAULUS PP. VI, Let. *Summi Dei*, 4 nov. 1963 (*AAS* 55 [1963] 979–995); *OT* 8, 9, 11; *PO* 3, 14; PAULUS PP. VI, Enc. *Sacerdotalis caelibatus*, 24 iun. 1967, 70, 71 (*AAS* 59 [1967] 684–686); *RFIS* 14, 44, 45, 51, 58, 96; SCEP Litt. circ., 17 maii 1970; SCCE Normae 11 apr. 1974, 81; SCCE Instr. *In ecclesi-*

asticam, 3 iun. 1979; SCCE Litt. circ., 6 ian. 1980
§2: c. 127; Pius PP. XII, Alloc. 24 iun. 1939 (*AAS* 31 [1939] 250–251); Pius PP. XII, Exhortatio *In auspicando*, 28 iun. 1948 (*AAS* 40 [1948] 374–376); Pius PP. XII, Exhort. Ap. *Menti nostrae*, 23 Sep. 1950 (*AAS* 42 [1950] 690); *OT* 9, 11; *PO* 7, 8, 15; *RFIS* 46, 47, 49; SCCE Normae, 11 apr. 1974, 71; SCCE Litt. circ., 6 ian 1980

CROSS REFERENCES: cc. 243, 244, 246, 276

COMMENTARY

Davide Cito

Human and spiritual formation of the student

1. "And just as for all the faithful, spiritual formation is central and unifies their being and living as Christians, that is, as new creatures in Christ who walk in the Spirit, so too for every priest his spiritual formation is the core which unifies and gives life to his being a priest and his acting as a priest" (*PDV* 45).

Although the process of formation constitutes a harmonious whole in which the various aspects are mutually integrated, a central role is held by spiritual formation, since the seminarians "intended to take on the likeness of Christ the priest by sacred ordination" (*OT* 8) should develop "the habit of drawing close to him as friends in every detail of their lives" (*ibidem*).

Since it is impossible to express the richness of the spiritual makeup which the priesthood should promote in a normative text, the canon points out in a general way the aims to which the diverse activities should be directed toward spiritual formation of the seminarians, and other particular significant aspects in relation to it. It would be the task of particular norms (national *Rationale* and rule of the seminary: cf. cc 242–243) to specify these guidelines in greater detail.

2. The aim of spiritual formation as indicated by this canon, consists of having the students become suitable "for the fruitful exercise of the pastoral ministry and that they become imbued with a missionary spirit," since "the spiritual gift which priests have received in ordination does not prepare them merely for a limited and restricted mission, but for the fullest, in fact the universal mission of salvation 'to the end of the earth.' The reason is that every priestly ministry shares in the fullness of the mission entrusted by Christ to the apostles" (*PO* 10; cf. RM 67).

In addition, the canon stresses that the authentic fruitfulness of the pastoral ministry should be closely conjoined to interior growth, in other words, to an "activity consisting of lively faith and charity," which presupposes the harmonious maturation of human and supernatural virtues (cf. *RFIS* 45), above all, in those that are directed towards the capacity to relate to others. In this regard, *Pastores dabo vobis* 43 outlines those characteristics that should distinguish the priest: "the priest should not be arrogant, or quarrelsome, but affable, hospitable, sincere in his words and heart, prudent and discreet, generous and ready to serve, capable of opening himself to clear and brotherly relationships and of encouraging the same in others, and quick to understand, forgive and console." In this regard, *Optatam totius* 11 lists among the virtues that are most appreciated among human beings and which help the sacred minister to be accepted: "sincerity, a constant love of justice, fidelity to one's promises, courtesy in deed, modesty and charity in speech."

3. The ecclesial dimension of a vocation and of priestly ministry,[1] therefore, cause that suitability for the pastoral ministry to have need of a deep communion with the Church, because the presbyter has been constituted to help and to cooperate with the episcopal order, and he is joined with other presbyters in close fraternity (cf. *LG* 28).

With this end in mind, the canon highlights the importance that spiritual formation be directed towards stirring up a deep union of charity "with the Roman Pontiff ... with his own Bishop ... with his own brethren," through a common life in the seminary which directs that candidates cultivate "bonds of friendship and understanding with others." In this sense, it constitutes an important duty for superiors in the seminary: "a primary and decisive mission, the formation of the candidate to the priesthood with emotional maturity" (*PDV* 43), (emotional maturity being an "affective maturity which is prudent, able to renounce anything that is a threat to it, vigilant over both body and spirit, and capable of esteem and respect in interpersonal relationships between men and women" (*PDV* 44)).

1. Cf. F. COCCOPALMERIO, "La formazione al ministero ordinato," in *La Scuola Cattolica* 112 (1984), p. 230; C. MERCÊS DE MELO, "Priests and Priestly Formation in the 'Code of Canon Law,'" in *Studia Canonica* 27 (1993), pp. 463–464.

246 **§ 1. Celebratio Eucharistica centrum sit totius vitae seminarii, ita ut cotidie alumni, ipsam Christi caritatem participantes, animi robur pro apostolico labore et pro vita sua spirituali praesertim ex hoc ditissimo fonte hauriant.**

§ 2. Efformentur ad celebrationem liturgiae horarum, qua Dei ministri, nomine Ecclesiae pro toto populo sibi commisso, immo pro universo mundo, Deum deprecantur.

§ 3. Foveantur cultus Beatae Mariae Virginis etiam per mariale rosarium, oratio mentalis aliaque pietatis exercitia, quibus alumni spiritum orationis acquirant atque vocationis suae roburconsequantur.

§ 4. Ad sacramentum paenitentiae frequenter accedere assuescant alumni, et commendatur ut unusquisque habeat moderatorem suae vitae spiritualis libere quidem electum, cui confidenter conscientiam aperire possit.

§ 5. Singulis annis alumni exercitiis spiritualibus vacent.

§ 1. The celebration of the Eucharist is to be the centre of the whole life of the seminary, so that the students, participating in the very charity of Christ, may daily draw strength of soul for their apostolic labour and for their spiritual life particularly from this richest of sources.

§ 2. They are to be formed in the celebration of the liturgy of the hours, by which the ministers of God, in the name of the Church, intercede with Him for all the people entrusted to them, and indeed for the whole world.

§ 3. Devotion to the Blessed Virgin Mary, including the rosary, mental prayer and other exercises of piety are to be fostered, so that the students may acquire the spirit of prayer and be strengthened in their vocation.

§ 4. The students are to become accustomed to approach the sacrament of penance frequently. It is recommended that each should have a director of his spiritual life, freely chosen, to whom he can trustfully reveal his conscience.

§ 5. Each year the students are to make a spiritual retreat.

SOURCES: §1: c. 1367, 1° et 2°; SCSUS Instr. *Postquam Pius*, 8 dec. 1938; PIUS PP. XII, Alloc., 24 iun. 1939 (*AAS* 31 [1939] 249); PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 23 sep. 1950, III (*AAS* 42 [1950] 666); IOANNES PP. XXIII, Alloc., 29 iul. 1961

(*AAS* 53 [1961] 563); *IOe* 14, 15; SCSUS Instr. *Doctrina et exemplo*, 25 dec. 1965, 23–25; *OT* 8; *RFIS* 52; SCCE Instr. *In ecclesiasticam*, 3 iun. 1979, 22–27; SCCE Litt. circ., 6 iun. 1980, II, 2

§2: SCSUS Litt. circ., 2 feb. 1945; PIUS PP. XII, Exhort. Ap. *Menti Nostrae*, 23 sep. 1950, I (*AAS* 42 [1950] 669–671); *IOe* 16; SCSUS Instr. *Doctrina et exemplo*, 25 dec. 1965, 26–31; *OT* 8; *RFIS* 53; SCCE Instr. *In ecclesiasticam*, 3 iun. 1979, 28–31; SCCE Litt. circ., 6 ian. 1980, II, 1

§3: c. 1367, 1°; PIUS PP. XII, Exhort. Ap. *Menti Nostrae*, 23 sep. 1950 (*AAS* 42 [1950] 672–673, 689); IOANNES PP. XXIII, Alloc., 29 iul. 1961, 2 (*AAS* 53 [1961] 563–564); *LG* 67; *OT* 8; *RFIS* 54; PAULUS PP. VI, Exhort. Ap. *Marialis cultus*, 2 feb. 1974, 42–55 (*AAS* 66 [1974] 152–162); SCCE Normae, 11 apr. 1974, 75–78; SCCE Instr. *In ecclesiasticam*, 3 iun. 1979, 10–11; SCCE Litt. circ., 6 ian. 1980

§4: c. 1367, 2°; SCSUS Litt., 8 oct. 1921, II; SCSUS Litt., 26 maii 1928; PIUS PP. XII, Enc. *Mystici Corporis*, 29 iun. 1943 (*AAS* 35 [1943] 235); PIUS PP. XII, Exhort. Ap. *Menti Nostrae*, 23 sep. 1950 (*AAS* 42 [1950] 674); IOANNES PP. XXIII Alloc. 29 iul. 1961 (*AAS* 53 [1961] 559–565); *RFIS* 45, 55; SCCE Instr. *In ecclesiasticam*, 3 iun. 1979, 35–36; SCCE Litt. circ., 6 ian. 1980

§5: c. 1367, 4°; PIUS PP. XII, Exhort. Ap. *Menti Nostrae*, 23 sep. 1950 (*AAS* 42 [1950] 674–675); *RFIS* 56

CROSS REFERENCES: §1: cc. 276 §2, 2°, 897, 899
§2: cc. 276 §2, 3°, 1173–1175
§3: c. 276 §2, 5°
§4: cc. 239 §2, 240 §1, 991
§5: cc. 276 §2, 4°, 1039

COMMENTARY

Davide Cito

Spiritual formation

The canon which is now the subject of our commentary, inspired in c. 1357 *CIC*/1917 and *Optatam totius* 8, lists, in its five paragraphs, the primary means of the spiritual formation of the candidates to the priesthood.

1. Since spiritual formation is intended to bring about that "students may learn to live in intimate and unceasing union with God the Father

through his Son Jesus Christ, in the Holy Spirit" (*OT* 8), the Eucharist is located at the center of all life and activity in the seminary, "the high point of Christian prayer ... the 'summit and source' of the sacraments and the Liturgy of the Hours" (*PDV* 48).

The canon requires that students participate daily in the Eucharistic celebration, which "is completed with the sacramental communion received in full freedom and with dignity" (*RFIS* 52). The subjective conditions needed to receive the Eucharist with dignity (cf. cc. 916, 919 § 1) lead the canon to solely establish, very opportunely, the obligation of participation in the Holy Mass. The scope of this paragraph goes far beyond the simple obligation of attending the Eucharistic sacrifice, since the ends towards which this prescription is directed, that "the students may draw strength in particular from the richest of sources for apostolic work and for their spiritual life", implies, on the part of the students, adequate interior dispositions. John Paul II, when referring to the essential importance of the Eucharist in the formation of candidates to the priesthood, affirms, "It is fitting that seminarians take part every day in the Eucharistic celebration, in such a way that afterward they will take up as a rule of their priestly life this daily celebration. They should, moreover, be trained to consider the Eucharistic celebration as the essential moment of their day, in which they will take an active part and at which they will never be satisfied with a merely habitual attendance. Finally, candidates to the priesthood will be trained to share in the intimate dispositions which the Eucharist fosters" (*PDV* 48).

2. Formation for celebration of the liturgy of the hours (cf. *RFIS* 53), "the public prayer of the Church" (*SC* 98; cf. c. 1174), which stresses the ministerial nature of prayer on behalf of the people of God, should be closely linked to the Eucharistic worship.

Even though, unlike c. 1367, 3° *CIC*/1917, which provided for the Sunday recitation of solemn Vespers, the canon does not offer any specific provisions about this. *RFIS* 53 suggests the frequent common recitation of some part of the office, above all Laudes and Vespers, which leaves a specific decision about this to the national *Rationale* and to the Rule of the seminary (cf. cc. 242 and 243).

3. "It is in fact by the light and with the strength of the word of God that one's own vocation can be discovered and understood, loved and followed, and one's own mission carried out. So true is this that the person's entire existence finds its unifying and radical meaning in being the terminus of God's word, which calls man, and the beginning of man's word, which answers God" (*PDV* 47). The dynamic of vocational fidelity, which emerges from the encounter with the word of God, whose "first and fundamental manner of responding to the word is prayer" (*PDV* 47), places on prayer "a primary value and requirement in the spiritual formation of candidates to the priesthood" (*PDV* 47).

Since the canon recommends in a general way "devotion to the Blessed Virgin Mary, including the rosary, meditation and other exercises of piety," it is a duty of great importance in the rule of the seminary, on the basis of norms within the national plan, to establish those exercises of piety which will allow seminarians to mature in the life of prayer. Furthermore, as *RFIS* 54 affirms, only if "those exercises of piety, as recommended by the venerable tradition and prescribed by the plan of the seminary are faithfully applied, and if their significance and effectiveness can be understood precisely," may the student acquire and maintain a faithful priestly life.[1]

4. A position of prominence is occupied by the sacrament of Penance within the scope of the liturgical and sacramental life. "It is necessary and very urgent to rediscover within spiritual formation the beauty and joy of the sacrament of Penance. In a culture which, through renewed and more subtle forms of self justification, runs the fatal risk of losing the 'sense of sin' and, as a result, the consoling joy of the plea for forgiveness and of meeting God who is 'rich in mercy,' it is vital to educate future priests to have the virtue of penance, which the Church wisely nourishes in her celebrations and in the seasons of the liturgical year, and which finds its fullness in the sacrament of Reconciliation" (*PDV* 48).

Even though a specific period has not been set for sacramental confession, unlike c. 1367 *CIC*/1917, which provided that it take place weekly, it is indicated, however, that it be regular and frequent: "the students should be accustomed to attending frequently."

However, insofar as the second part of the paragraph is concerned, in other words, the recommendation to have a freely chosen "moderator vitae spiritualis," it should be emphasized that this norm has been the subject of attention on the part of commentators,[2] not only for the purpose of establishing the prerequisites of the "moderator vitae spiritualis" in relation to the "director spiritus" of c. 239 § 2, but also for surmounting any possible contradictions that may exist between the literal tenor of the two canons. Canon 239 § 2, in effect, speaks about the possibility of approaching "other priests who have been deputed to this work by the Bishop" for

1. Regarding the importance of Marian piety in the formation of seminarian students, cf. CCE, Lit. circ. *La seconda assemblea*, regarding "La Virgen María en la formación intelectual y espiritual," March 25, 1988, Prot. no. 1305/87, no. 33, in *EV* XI (Bologna 1991), nos. 319–321.

2. For other thoughts on this topic, cf. F. Coccopalmerio, "La formazione al ministero ordinato," in *La Scuola Cattolica* 112 (1984), pp. 239–244; B. Testacci, "La figura del direttore spirituale nel seminario maggiore," in *Commentarium pro Religiosis* 66 (1985), pp. 59–82; T. Rincón-Pérez, "Libertad del seminarista para elegir el 'moderador' de su vida espiritual," in *Ius canonicum* 28 (1988), pp. 451–488; idem, "Sobre algunas cuestiones canónicas a la luz de la Exh. Apost. 'Pastores dabo vobis'," in *Ius Canonicum* 33 (1993), pp. 356–360; V. de Paolis, "La formazione dei chierici," in *Il fedele cristiano* (Bologna 1989), pp. 138–140; G. Ghirlanda, "Alcuni aspetti della formazione sacerdotale nel diritto canonico," in *La civiltà Cattolica*, 1993, III, pp. 231–236.

spiritual direction, while the present canon, on the other hand, mentions a "spiritual director, freely chosen."

If doctrine, on one hand, has shown to be consistent with the juridical distinction made between these two figures (something that does not happen in documents subsequent to *CIC*,[3] in which not only is there no trace of a distinction, since confessors are also included in the discipline in regard to spiritual guidance), it becomes, on the other hand, more problematic to find a satisfactory solution between the freedom accorded to the seminarian by the present canon and the limitations on that same freedom in c. 239 § 2.

Within the scope of this brief commentary and taking into account that the "spiritus director" and the "moderator vitae spiritualis" most often coincide, in actual practice, in the same person, it is my understanding that two points of view should be taken into account: *a)* that, in relation to the spiritual life of the seminarian, and not only from a juridical perspective, the two figures occupy different planes; *b)* that an attempt must be made to harmonize these two requirements, both of which are necessary: that is, freedom of the person and the right-duty of the Church to discern and to accompany the candidate along his vocational path.

In regard to point *a)* it seems necessary to stress that, while the "spiritus director" is a true and proper ecclesiastical office (cf. c. 145) with the specific mission, received from the bishop, to cooperate with other superiors at the seminary for discerning the vocation of the candidate and for his priestly formation (as a result of which his function is limited in space, time and subject matter) the "moderator vitae spiritualis" is a person of trust for the seminarian, who fulfills his mission by virtue of the choice that the candidate makes. His action is not linked to the time of his formation in the seminary, but rather has the scope to which the established relationship allows.

Insofar as point *b)* is concerned, if, on one hand, the freedom of the seminarian to find spiritual direction to his liking is a given right because of the fuller right to follow his own spirituality (c. 214) (which, moreover, "is indeed, in itself, a factor which helps growth and priestly fraternity": *PDV* 68); on the other hand, the bond born out of the act of freedom to submit one's own vocation to the Church, so that it may be recognized and cultivated (cf. *PDV* 36), is no less strong.

It follows from this that there is maximum freedom to choose the "moderator vitae spiritualis," provided that it does not constitute an obstacle to the formational action carried out by the seminary. It is impossible, on the other hand, to establish with precision the objective criteria for

3. Cf. *RFIS* 55; CCE "Direttive sulla preparazione degli educatori nei seminari," November 4, 1993, no. 44, in the supplement to *L'Osservatore Romano*, January 12, 1994, no. 8.

evaluating each possible conflict, so as to avoid possible arbitrariness. Given the type of matter, there is an inevitable prudential scope of judgment entrusted to the superiors in the seminary, according to what the Pontiff has affirmed in regard to those seminarians who come from ecclesial associations and movements: they "should take in genuinely and sincerely the indications for their training imparted by the Bishop and the teachers in the seminary, abandoning themselves with real confidence to their guidance and assessments" (*PDV* 68). By taking into account the delicate nature and importance of this subject, when giving these instructions, those responsible for formation in the seminary have the grave duty of acting with the authentic prudence of those who know how to promote the exercise of the legitimate freedom of the seminarians, while integrating it at the same time into the unity of educational action.

5. Without specifying the length or ways of exercising this freedom, the need for annual spiritual exercises is reaffirmed. Only in the event that they precede reception of some grade of orders, they should last at least five days (cf. c. 1039). The particular system of norms may even extend it, as c. 1039 indicates, to those annual spiritual exercises prescribed by this canon.

247 **§ 1. Ad servandum statum caelibatus congrua educatione praeparentur, eumque ut peculiare Dei donum in honore habere discant.**

§ 2. De officiis et oneribus quae ministris sacris Ecclesiae propria sunt, alumni debite reddantur certiores, nulla vitae sacerdotalis difficultate reticita.

§ 1. By appropriate instruction they are to be prepared to observe celibacy and learn to hold it in honour as a special gift of God.

§ 2. The students are to be given all the requisite knowledge concerning the duties and burdens which are proper to the sacred ministers of the Church, concealing none of the difficulties of the priestly life.

SOURCES: § 1: PIUS PP. XII, Alloc., 24 iun. 1939 (*AAS* 31 [1939] 249–250); PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 23 sep. 1950 (*AAS* 42 [1950] 690–691); PIUS PP. XII, Enc. *Sacra virginitas*, 25 mar. 1954 (*AAS* 46 [1954] 161–191); IOANNES PP. XXIII, Alloc., 26 iun. 1960 (*AAS* 52 [1960] 226); *OT* 10; *PO* 16; PAULUS PP. VI, Enc. *Sacerdotalis caelibatus*, 24 iun. 1967 (*AAS* 59 [1967] 657–697); Secr. St., Litt. circ., 2 feb. 1969; *RFIS* 48; PAULUS PP. VI, Let. *Le dichiarazioni*, 2 feb. 1970 (*AAS* 62 [1970] 98–103); *UT* 915–918; SCCE Normae, 11 apr. 1974; IOANNES PAULUS PP. II, Litt. Ap. *Novo incipiente*, 8 apr. 1979, 8, 9 (*AAS* 71 [1979] 405–409)
§ 2: *OT* 9; PAULUS PP. VI, Enc. *Sacerdotalis caelibatus*, 24 iun. 1967, 69 (*AAS* 59 [1967] 684); *RFIS* Introductio, 4; SCCE Normae, 11 apr. 1974, 83

CROSS REFERENCES: cc. 276, 277, 282, 285, 1037

COMMENTARY

Davide Cito

Formation for celibacy and for other priestly duties

"Priestly celibacy should not be considered just as a legal norm or as a totally external condition for admission to ordination, but rather as a value that is profoundly connected with ordination, whereby a man takes on the likeness of Jesus Christ, the good shepherd and spouse of the Church, and therefore as a choice of a greater and undivided love for Christ and his Church, as a full and joyful availability in his heart for the

pastoral ministry. Celibacy is to be considered as a special grace, as a gift" (*PDV* 50).[1]

The theological density of the very ancient ecclesial tradition of celibate priesthood,[2] together with some current trends which, from time to time, have raised objections to it,[3] justify the insertion of this canon, which was absent in the Pio-Benedictine Code and which has been drawn from *Optatam totius* 10.

The fact that the obligation of celibacy is not limited to a mere juridical-formal prescription, but also brings with it maturation and growth in the virtue of chastity with characteristics inherent to the priestly condition, leads this canon to refer, above all, to the duty to offer an adequate education, not only for observance of this obligation, but in order that the seminarian may have a positive view about this subject as well.

This constitutes a particularly grave duty for seminary educators, because it directly affects the vocational discernment, with all the consequences that emanate from this.[4]

The criteria to be followed when teaching the formation of chastity in celibacy have been authoritatively enunciated for today's social and cultural context, by the Supreme Pontiff in *Pastores dabo vobis* 50.

Secondly, it is necessary that the seminarian possess "a sufficient degree of psychological and sexual maturity as well as an assiduous and authentic life of prayer" (*PDV* 50; cf. *RFIS* 48).

For this purpose, it is necessary that the candidate to the priesthood be educated in the creation of correct emotional relationships both inside and out of the seminary,[5] with the customary recourse to the "ascetical norms that are proven by the Church's experience,"[6] and in a behavior dictated by Christian prudence in the face of what could threaten the safeguarding of this gift.

By way of example, the *Directory on the Ministry and Life of the Priest* urges avoidance "frequenting places, attending shows or reading materials that constitute a danger to the observance of celibate chastity" (n. 60; cf. *PO* 16), as well as the indiscriminate use of the social communications media (ibid.).

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1. Cf. A. del Portillo, *Consecrazione e missione del sacerdote* (Milan 1990), pp. 63–67.
2. Cf. Paul VI, Enc. *Sacerdotalis coelibatus*, June 24, 1967, nos. 17–34; CC *Directory on the Ministry and Life of the Priest*, January 31, 1994, nos. 57–59; A.M. Stickler, "Il celibato ecclesiastico. La sua storia ed i suoi fondamenti teologici," in *Ius Ecclesiae* 5 (1993), pp. 3–60.
3. Cf. CC *Directory...*, cit., no. 60; J. Herranz, *Studi sulla nuova legislazione della Chiesa* (Milan 1990), pp. 320–321.
4. Cf. SCCE, *Orientamenti educativi per la formazione al celibato sacerdotale*, April 11, 1974, no. 38, in *EV* V (Bologna 1979), nos. 275–276.
5. Cf. ibid, nos. 70–74 and 83–88.
6. CC, *Directory...*, cit., no. 60.

Apart from the duty to educate seminarians to live the obligations deriving from the state of celibacy § 2 (drawn from *OT* 9) gives a more general invitation to "be given knowledge about the obligations and burdens proper to the sacred ministers" (cf., e.g., cc. 276, 282, 285). If, on one hand, it is a duty of justice not to hide from seminarians the difficulties and demands of the priestly life, on the other, it must be kept in mind that, as in the case of § 1, the duty should not be limited to providing mere information, even though the expression "to be given knowledge" is used, but rather should involve teaching in a positive sense, so that students can discover the connection between these obligations and the divine gift of the vocation.

248 **Institutio doctrinalis tradenda eo spectat, ut alumni, una cum cultura generali necessitatibus loci ac temporis consentanea, amplam atque solidam acquirant in disciplinis sacris doctrinam, ita ut, propria fide ibi fundata et inde nutrita, Evangelii doctrinam hominibus sui temporis apte, ratione eorundem ingenio accommodata, nuntiare valeant.**

The doctrinal formation given is to be so directed that the students may acquire a wide and solid teaching in the sacred sciences, together with a general culture which is appropriate to the needs of place and time. As a result, with their own faith founded on and nourished by this teaching, they ought to be able properly to proclaim the Gospel to the people of their own time, in a fashion suited to the manner of the people's thinking.

SOURCES: PIUS PP. XII, Alloc., 24 iun. 1939 (*AAS* 31 [1939] 247); SCSUS Let., 7 mar. 1950 (*AAS* 42 [1950] 836–840); PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 23 sep. 1950, III (*AAS* 42 [1950] 681–694); PIUS PP. XII, Alloc., 17 oct. 1953 (*AAS* 45 [1953] 682–689); IOANNES PP. XXIII, Alloc., 29 iul. 1961 (*AAS* 53 [1961] 559–565); PAULUS PP. VI, Let. *Summi Dei*, 4 nov. 1963 (*AAS* 55 [1963] 979–995); *OT* 13–18; *AG* 1–6; *GS* 58, 62; *DPMB* 195; *RFIS* 59; SNB Nota, 10 iul. 1970; SCCE Litt. circ., 22 feb. 1976, 4–16, 117

CROSS REFERENCES: cc. 211, 213, 229

COMMENTARY

Davide Cito

Doctrinal formation of the students

In this canon, and in the six that follow, the legislator offers the discipline of whatever affects the doctrinal formation of candidates to the priesthood. Its importance has been reaffirmed by *Pastores dabo vobis* 51, where the Roman Pontiff stresses that it "has its own characteristics, but it is also deeply connected with, and indeed can be seen as a necessary expression of, both human and spiritual formation: it is a fundamental demand of human intelligence by which one participates in the light of God's mind and seeks to acquire a wisdom which, in turn, opens to and is directed towards knowing and adhering to God."

In order to describe the general characteristics that doctrinal formation teaches to seminarians, the legislator moves on a double level: *a)* the specific end towards which intellectual formation is directed; *b)* the general end towards which not only the intellectual aspect of seminary formation should be directed, but the entire process of education as well.

This becomes particularly significant because it precludes doctrinal formation from being limited to a simple erudition of the sacred sciences. On the contrary, it should be closely linked to the spiritual life and pastoral mission of the future priest: "Through study, especially the study of theology, the future priest assents to the word of God, grows in his spiritual life and prepares himself to fulfill his pastoral ministry. This is the many-sided and unifying scope of the theological study indicated by the Council" (*PDV* 51).

The specific aim of doctrinal formation includes two aspects: *a)* "a wide and solid knowledge of the sacred disciplines;" *b)* "a general culture suitable to the needs of time and place." It should be stressed, however, that these two aspects cannot be separated because it is not possible to acquire authentic knowledge of the sacred disciplines, set apart from the times in which one is living. Also, as *Gaudium et spes* 58 affirms: "In his self-revelation to his people culminating in the fullness of manifestation in his incarnate Son, God spoke according to the culture proper to each age. Similarly the Church has existed through the centuries in varying circumstances and has utilized the resources of different cultures in its preaching to spread and explain the message of Christ, to examine and understand it more deeply, and to express it more perfectly in the liturgy and in various aspects of the life of the faithful."

It can be inferred from this that the term "general culture" to which the canon refers does not appear only as a vehicle for the transmission of concepts, but it is also a mode through which the life of the people of God is expressed.

As has been stated before, doctrinal formation should promote spiritual growth and make candidates to the priesthood suitable for "announcing the message of the Gospel appropriately to men of their own time, in a manner suited to their own capability." This last aspect constitutes an explanation of the duty that the Church has to promote and facilitate the right of the faithful to receive the word of God from sacred pastors (c. 213),[1] and it entails the obligation to organize studies at the seminary with the depth and methodology appropriate to the demands of those persons the sacred ministers are destined to serve. "It is necessary to oppose firmly the tendency to play down the seriousness of studies and the commitment to them. This tendency is showing itself in certain spheres of the

1. Cf. C. J. ERRÁZURIZ M., *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), pp. 33–35.

Church, also as a consequence of the insufficient and defective basic education of students beginning the philosophical and theological curriculum. The very situation of the Church today demands increasingly that teachers be truly able to face the complexity of the times and that they be in a position to face competently, with clarity and deep reasoning, the questions about meaning which are put by the people of today, questions which can only receive full and definitive reply in the Gospel of Jesus Christ" (*PDV* 56).

249 **Institutionis sacerdotalis Ratione provideatur ut alumni non tantum accurate linguam patriam edoceantur, sed etiam linguam latinam bene calleant necnon congruam habeant cognitionem alienarum linguarum, quarum scientia ad eorum formationem aut ad ministerium pastorale exercendum necessaria vel utilis videatur.**

The Programme of priestly formation is to provide that the students are not only taught their native language accurately, but are also well versed in Latin, and have a suitable knowledge of other languages which would appear to be necessary or useful for their formation or for the exercise of their pastoral ministry.

SOURCES: c. 1364,2°; PIUS PP. XI, Let. *Officiorum omnium*, 1 aug. 1922 (*AAS* 14 [1922] 449–458); PIUS PP. XI, m. p. *Latinarum litterarum*, 20 oct 1924 (*AAS* 16 [1924] 417–420); PIUS PP. XII, Enc. *Divino afflante Spiritu*, 30 sep. 1943 (*AAS* 35 [1943] 306–307); SCSUS Let., 27 oct. 1957 (*AAS* 50 [1958] 292–297); IOANNES PP. XXIII, Ap. Const. *Veterum sapientia*, 22 feb. 1962 (*AAS* 54 [1962] 129–135); SCSUS Instr. *Sacrum latinae linguae*, 22 apr. 1962, ch. III, art. I–II, ch. V (*AAS* 54 [1962] 339–368); PAULUS PP. VI, Let. *Summi Dei*, 4 nov. 1963 (*AAS* 55 [1963] 979–995); PAULUS PP. VI, m. p. *Studia latinitatis*, 22 feb. 1964 (*AAS* 56 [1964] 225–231); *OT* 13; *ES* I, 3; *RFIS* 66, 67

CROSS REFERENCES: cc. 234, 242, 249, 257 § 2

COMMENTARY

Davide Cito

Humanistic cultural formation

Directly linked with the preceding canon, insofar as the "general culture" which the seminarian should possess is concerned, and with c. 234, which contemplates the humanistic formation of those who are seeking to be admitted into the priesthood, this canon outlines some guiding principles about the knowledge of languages, leaving the task of establishing prescriptions about this subject in greater detail to the *Rationes* of the priestly formation of each nation (cf. c. 242).

Unlike c. 1364, 2° *CIC*/1917, which made reference only to the Latin language and the national language, the current canon distinguishes three types of language, and establishes a different degree of knowledge for each one of them: *a)* one's own language, which should be meticulously known ("accurate edoceantur"); *b)* the Latin language, of which a good knowledge should be possessed ("bene calleant"); *c)* and other languages, knowledge of which should be held in proportion to the formation of the seminarian or to the exercise of the pastoral ministry. Even though it may seem obvious, it is not useless to stress the importance for seminarians to know how to express themselves correctly in their own spoken and written language, since it is an indispensable means for developing their future ministry.

It has been observed with reason that the canon does not place the need for the Latin language and foreign languages on the same plane,[1] and this is not only true in regard to the degree of knowledge but also for the underlying motivations. The need for foreign languages, in effect, is subordinate to educational or pastoral reasons. Although it should not be forgotten (cf. c. 234 § 2) that knowledge of a foreign language is spreading more and more in the humanistic formation of students, while Latin affects priestly formation as such,[2] because a language, in addition to being a means of communications among people, is the keeper of the tradition of a people and allows access to its cultural heritage. Ignorance of Latin would preclude, in fact, contact with the sources of the ecclesial tradition. The calls of the Magisterium directed at promoting the study of the Latin language,[3] as well as the directions contained in *RFIS* 66, which established that any possible gaps in the students' knowledge of Latin be remedied, should also be understood in this sense.

It is necessary to stress at the same time, by taking into account the variety of cultural circumstances which exist at the current time, not only between one country and other, but also within the same nation, and by considering that access to university schools is not necessarily preceded by certain studies in the humanities including Latin, that the possibility of applying the precepts of this canon homogeneously would entail more than a few difficulties, even for the national *Rationes*.

1. Cf. V. DE PAOLIS, "La formazione dei chierici," in *Il fedele cristiano* (Bologna 1989), pp. 132–133.
2. Cf. Ibid.
3. Cf. *OT* 13; PAUL VI, Litt. Ap. *Summi Dei Verbum*, November 4, 1963, in *AAS* 55 (1963), p. 993; idem, mp *Studia latinitatis*, February 22, 1964, in *AAS* 56 (1964), pp. 225–231.

250 **Quae in ipso seminario philosophica et theologica studia ordinantur, aut successive aut coniuncte peragi possunt, iuxta institutionis sacerdotalis Rationem; eadem completum saltem sexennium complectantur, ita quidem ut tempus philosophicis disciplinis dedicandum integrum biennium, studiis vero theologicis integrum quadriennium adaequet.**

The philosophical and theological studies organised in the seminary itself may be conducted either in succession or conjointly, in accordance with the Programme of priestly formation. These studies are to take at least six full years, in such a way that the time given to philosophical studies amounts to two full years and that allotted to theological studies to four full years.

SOURCES: c. 1365 §§ 1 et 2; SCSUS Let., 26 apr. 1920; SCSUS Let., 2 oct 1921, III; BENEDICTUS PP. XV, Let. *Saepe Nobis*, 30 nov. 1921 (*AAS* 13 [1921] 554–559); PIUS PP. XI, Let. Ap. *Officiorum omnium*, 1 aug. 1922 (*AAS* 14 [1922] 449–451); *RFIS* 60, 61, 70, 76; SCCE Litt. circ., 22 feb. 1976, 129, 132

CROSS REFERENCES: cc. 239 § 1, 242, 254 § 1, 261 § 2, 817, 819, 1032 §§ 1 et 2

COMMENTARY

Davide Cito

Philosophical and theological studies

The canon establishes the general regulation of philosophical and theological studies that are to be carried out at the seminary, sets some guiding principles, and entrusts to the national programs in priestly formation (cf. c. 242) those decisions that extend beyond these principles.

These principles contemplate: *a)* the length of studies; *b)* the modes for undertaking them; *c)* the distribution of time intended for philosophical and theological subjects.

a) *Length of studies.* By adhering to the provisions established in c. 1365 §§ 1–2 *CIC*/1917, the complete length of studies should be carried out over the course of at least six years (cf. *RFIS* 61 c). This length of time, taxative in character, is prescribed not only for the case of studies performed at the seminary referred to in this same canon ("in ipso seminario"), but also whenever they take place at an ecclesiastical university

or school (c. 817), which constitutes a hypothesis not only provided for (cf. c. 239 § 1), but also recommended on certain occasions (cf. c. 819). The scientific-theological formation of those who are journeying towards the priesthood is considered among the particular functions of the schools of sacred theology (cf. *SapChr* 74 § 1).

As the first institutional cycle of a faculty of theology is extended over the course of a five-year period (cf. *SapChr* 72 a), to this is added the so-called *pastoral year* (cf. *Optatam totius* 12), which should precede ordination as a priest (c. 1032 § 2). This same school may make arrangements in this regard (cf. *SapChr* 74 § 2), although it is not mandatory that it does so.[1] In the latter case, it is the duty of the superiors of the seminary, according to c. 261§ 1, to establish the opportune manner in which to complete the sixth year, on the basis of the forms provided for in the *Rationale* of priestly formation.[2]

b) *Methods of conducting these studies.* Insofar as the manner in which these studies in philosophy and theology may be pursued, the canon provides that it can be done successively or simultaneously. In this regard, *RFIS* 60 proposes three specific models, two of which, however, recognize the criteria for successive studies: "A) In distinct and successive periods, the following are pursued: humanistic and scientific studies; philosophical studies; theological studies. B) Humanistic and scientific studies are pursued simultaneously with philosophical studies; afterwards, theological studies are undertaken. C) After humanistic and scientific studies, philosophical and theological studies are undertaken at the same time, so that philosophy is conjoined together with theology." This classification is presented by way of example, without precluding other possible criteria for structuring studies, with the sole restriction that, in the case that model C (philosophy and theology studied conjointly) were to be adopted, "philosophy should be taught as a distinct discipline with its own distinct methodology, thereby preventing it from being reduced to a fragmentary and occasional treatment of problems, conducted solely by virtue of special theological questions" (*RFIS* 60).

c) *Distribution of the time allotted to philosophical and theological matters.*

Whatever the criteria adopted by the national *Rationale*, and as a result, whatever study plan is adopted, the six-year period in philosophy and theology should include two complete years of philosophy and four complete years in theology, or a period of time equivalent in proportion, in accordance with the academic systems currently in effect within the particular country (cf. *RFIS* 61 c).

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1. Cf. T. Rincón-Pérez, commentary on c. 250, in *Pamplona Com.*
2. Cf., e.g., "'Rationale studiorum' dei seminari maggiori d'Italia," June 10, 1984, nos. 23–27, in *Enchiridion CEI*, III (Bologna 1986), nos. 1763–1767.

251 **Philosophica institutio, quae innixa sit oportet patrimonio philosophico perenniter valido, et rationem etiam habeat philosophicae investigationis progredientis aetatis, ita tradatur, ut alumnorum formationem humanam perficiat, mentis aciem provehat, eosque ad studia theologica peragenda aptiores reddat.**

Philosophical formation must be based on the philosophical heritage that is perennially valid, and it is also to take account of philosophical investigations over the course of time. It is to be so given that it furthers the human formation of the students, sharpens their mental edge and makes them more fitted to engage in theological studies.

SOURCES: SCSUS Let., 26 apr. 1920, VIII; SCSUS Let., 2 oct. 1921, III B; SCSUS Litt. circ. 1 iul. 1958; PIUS PP. XI, Let. Ap. *Officiorum omnium*, 1 aug. 1922 (*AAS* 14 [1922] 454); PIUS PP. XI, Enc. *Studiorum Ducem*, 29 iun. 1923 (*AAS* 15 [1923] 307–329); PIUS PP. XII, Enc. *Humani generis*, 12 aug. 1950 (*AAS* 42 [1950] 561–578); PIUS PP. XII, Alloc., 17 oct. 1953 (*AAS* 45 [1953] 682–690); SCSUS Litt. circ., 1 iul. 1958; PAULUS PP. VI, Let. *Summi Dei*, 4 nov. 1963 (*AAS* 55 [1963] 979–995); *OT* 15; *GE* 10; SCSUS Resp., 20 dec. 1965; PAULUS PP. VI, Alloc., 10 sep. 1965 (*AAS* 57 [1965] 788–792); *RFIS* 70–75; SCCE Litt. circ., 20 ian. 1972; PAULUS PP. VI, Let. Ap. *Lumen Ecclesiae*, 20 nov. 1974 (*AAS* 66 [1974] 673–702; SCCE Litt. circ., 22 feb. 1976, 48–53; *SapChr* 79, 80; IOANNES PAULUS PP. II, Alloc., 17 nov. 1979 (*AAS* 71 [1979] 1472–1483); IOANNES PAULUS PP. II, Alloc., 15 dec. 1979 (*AAS* 71 [1979] 1538–1549)

CROSS REFERENCES: cc. 242, 262 § 2, 1031 § 1

COMMENTARY

Davide Cito

Philosophical formation

"A crucial stage of intellectual formation is the study of philosophy, which leads to a deeper understanding and interpretation of the person, and of the person's freedom and relationships with the world and with God" (*PDV* 52).

The canon, which presents features of great generality, offers indications about philosophical formation, relating the end toward which such formation should be oriented and certain methodological criteria that should be adopted.

In regard to the first point, it may even seem evident and unnecessary to recall that philosophical formation should enrich "the human formation of the students, should sharpen their mental edge and should make them more fitted to engage in theological studies," since this all belongs to the same structure of philosophical studies. However, it should be emphasized that enrichment in human formation and the suitability to undertake philosophical studies require not only the development of argumentative skills and the possession of a great capacity for ideas, but also an education in those values inherent to a "sound philosophy." As John Paul II has stressed, "[A proper philosophical training] is vital, not only because of the links between the great philosophical questions and the mysteries of salvation which are studied in theology under the guidance of the higher light of faith, but also vis-a-vis an extremely widespread cultural situation which emphasizes subjectivism as a criterion and measure of truth: Only a *sound philosophy* can help candidates for the priesthood to develop a reflective awareness of the fundamental relationship that exists between the human spirit and truth, that truth which is revealed to us fully in Jesus Christ. Nor must one underestimate the importance of philosophy as a guarantee of that 'certainty of truth', which is the only firm basis for a total giving of oneself to Jesus and to the Church. ... Philosophy greatly helps the candidate to enrich his intellectual formation in the 'cult of truth' ... which leads one to recognize that the truth is not created or measured by man but is given to man as a gift by the supreme truth, God" (*PDV* 52).

Moreover, it has been recently pointed out that "even respecting the various cultures, it is necessary to bear in mind that not all philosophy or metaphysics is compatible with revelation and theology. Any legitimate pluralism presupposes and demands acceptance of a fundamental core of truths connected to revelation, drawn up within a perennially valid heritage, which should constitute the basis of the teaching of philosophy."[1]

Accordingly, the methodological criteria established in this canon (which refers to a philosophy "which should be based on the heritage of a perennial philosophy and should also simultaneously take into account philosophical investigations over the course of time") are closely connected to the ends which the philosophical formation should pursue.

Insofar as the value which must be attributed to the expression "heritage of perennial philosophy" ("patrimonio philosophico perenniter

1. SCEP, Litt. cir. *La Congregazione,* directives regarding formation in the major seminaries, Prot. 1931/71, April 25, 1987, in *EV* X (Bologna 1990), no. 1734.

valido") is concerned, it should be kept in mind that the abrogated Code, in c. 1366 § 2, demanded that professors explain rational philosophy faithfully following the method and doctrine of the Angelic Doctor, in other words, St. Thomas Aquinas. This orientation was also subsequently reaffirmed,[2] although with diverse nuances, emphasizing that this involved, above all, firmly maintaining a core of fundamental truths.

The document pertaining to the study of philosophy in seminaries synthesized this core into three central ideas: "a) that human knowledge is prepared to understand objective and necessary truths in contingent realities, and as a result, reaching a critical realism, a point of departure for ontology; b) that it is possible to construct a realistic ontology which reflects transcendent values and which ends by affirming a personal Absolute, creator of the universe; c) that, in a similar way, an anthropology that safeguards the authentic spirituality of people and that leads to a theocentric ethics, open to transcendence and simultaneously to the social dimension of individuals, is also possible."[3]

The norms in the Code have been subsequently specified by *RFIS* 70–75, which, although it leaves the task of designing a curriculum of philosophical studies in each country to the national program of priestly formation (cf. c. 242), it sets some general guidelines about their structure. Among these, the importance of systemic philosophy and of each of its parts can be pointed out, in order to obtain a solid and coherent knowledge of people, of the world and of God (n. 71); the attention which should be given to the history of philosophy, in order to achieve a clear understanding of its genesis and of the development of the most important problems (n. 72); the usefulness of sciences related and connected to the problems of philosophy, while avoiding an encyclopedic and superficial erudition (n. 73).

The program of priestly formation, finally, should contain a list of all the disciplines comprising the philosophical course of studies, with a brief indication of the study plan of each one, the number of years or of semesters to be pursued by each, and the weekly schedule of lessons (n. 75). In the event that this could become especially burdensome for reasons of objective circumstances (such as the breadth of a country or the coexistence of diverse systems), it would be sufficient to present some models as guidelines for the program (n. 76).

2. Cf. *OT* 15, note 29; SCCE, Litt. cir. *En cette période*, regarding the teaching of philosophy in the seminary, Prot. 137/65, January 20, 1972, in *EV* IV (Bologna 1978), nos. 1516–1556, with regard to all of the above, 1554; *Comm.* 14 (1982), p. 52. Cf. also T. RINCÓN-PÉREZ, commentary on c. 251, in *Pamplona Com.*

3. SCCE, Litt. cir. *En cette période...*, cit., no. 1552.

252 **§ 1. Institutio theologica, in lumine fidei, sub Magisterii ductu, ita impertiatur, ut alumni integram doctrinam catholicam, divina Revelatione innixam, cognoscant, propriae vitae spiritualis reddant alimentum eamque, in ministerio exercendo rite annuntiare ac tueri valeant.**

§ 2. In sacra Scriptus peculiari diligentia erudiantur alumni, ita ut totius sacrae Scripturae conspectum acquirant.

§ 3. Lectiones habeantur theologiae dogmaticae, verbo Dei scripto una sacra Traditione semper innixae, quarum ope alumni mysteria salutis, s. Thoma praesertim magistro, intimius penetrare addiscant, itemque lectiones theologiae moralis et pastoralis, iuris canonici, liturgiae, historiae ecclesiasticae, necnon aliarum disciplinarum, auxiliarium atque specialium, ad normam praescriptorum institutionis sacerdotalis Rationis.

§ 1. Theological formation, given in the light of faith and under the guidance of the magisterium, is to be imparted in such a way that the students learn the whole of catholic teaching, based on divine Revelation, that they make it a nourishment of their own spiritual lives, and that in the exercise of the ministry they may be able properly to proclaim and defend it.

§ 2. Students are to be instructed with special care in sacred Scripture, so that they may acquire an insight into the whole of sacred Scripture.

§ 3. Lectures are to be given in dogmatic theology, based always on the written word of God and on sacred Tradition; through them the students are to learn to penetrate more deeply into the mysteries of salvation, with St Thomas in particular as their teacher. Lectures are also to be given in moral and pastoral theology, canon law, liturgy, ecclesiastical history, and other auxiliary and special disciplines, in accordance with the provision of the Programme of priestly formation.

SOURCES: § 1: SCSUS Let., 26 apr. 1920, IX; SCSUS Let., 2 oct. 1921, III C; PIUS PP. XII, Alloc., 24 iun. 1939 (*AAS* 31 [1939] 247–248); PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 23 sep. 1950 (*AAS* 42 [1950] 688); *OT* 16; *DV* 2–4; 14–17; 25; SCCE Normae, 20 maii 1968, 30 notula 12; *RFIS* 76; SCCE Instr. *Tra i molteplici*, 22 feb. 1976; *SapChr* 66–68

§ 2: c. 1365 § 2; SCSUS Let., 26 apr. 1920, IX b; SCSUS Let., 25 ian. 1924; PIUS PP. XI, m. p. *Bibliorum scientiam*, 27 apr. 1924 (*AAS* 16 [1924] 180–182); PIUS PP. XII, Enc. *Divino af-*

flante Spiritu, 30 sep. 1943 (*AAS* 35 [1943] 301, 321–322); PONTIFICIA COMMISSIO BIBLICA, Instr. *Sanctissimus Dominus*, 13 maii 1950 (*AAS* 42 [1950] 495–505); SCHO Monitum *Biblicarum disciplinarum*, 20 iun. 1961 (*AAS* 53 [1961] 507); PONTIFICIA COMMISSIO BIBLICA, Instr. *Sancta Mater Ecclesia*, 21 apr. 1964 (*AAS* 56 [1964] 712–718); *OT* 16; *RFIS* 78; SCCE Litt. circ., 22 feb. 1976, 79–84
§ 3: c. 1365 §§ 2 et 3; SCSUS Decr. *Cum novum iuris*, 7 aug. 1917 (*AAS* 9 [1917] 439); SCSUS Let., 26 apr. 1920, IX; SCSUS Let., 2 oct. 1921, III C; PIUS PP. XI, Let. *Officiorum omnium*, 1 aug. 1922 (*AAS* 14 [1922] 449–458); SCSUS Let., 8 sep. 1926 (*AAS* 18 [1926] 453–455); PIUS PP. XI, Ap. Const. *Divini cultus*, 20 dec. 1928 (*AAS* 21 [1929] 33–41); SCSUS Litt., 28 aug. 1929 (*AAS* 22 [1930] 146–148); SCSUS Litt., 21 dec. 1944 (*AAS* 37 [1945] 173–176); SCSUS Let., 15 aug. 1949 (*AAS* 41 [1949] 618–619); PIUS PP. XII, Enc. *Musicae sacrae*, 25 dec. 1955, IV (*AAS* 48 [1956] 5–25); SCHO Instr. *Contra doctrinam*, 2 feb. 1956 (*AAS* 48 [1956] 144–145); SCSUS Litt. circ., 25 maii 1961; IOANNES PP. XXIII, Let. *Iucunda laudatio*, 8 dec. 1961 (*AAS* 53 [1961] 810–813); PAULUS PP. VI, Let. *Summi Dei*, 4 nov. 1963 (*AAS* 55 [1963] 979–995); *SC* passim; *IOe* 11, 12, 14; *OT* 16; *DV* 24; SCSUS Instr. *Doctrina et exemplo*, 25 dec. 1965; SCCE Litt. circ., 2 apr. 1975; SCCE Instr. *Tra i molteplici*, 22 feb. 1976, 85–115; SCCE Instr. *In ecclesiasticam*, 3 iun. 1979, 1, 43–60, Appendix

CROSS REFERENCES: § 1: cc. 211, 217, 218, 248, 254 § 1, 279 § 1, 1032 § 1
§ 2: cc. 253 § 2, 276 § 2, 2°, 279 § 1, 760
§ 3: cc. 253 § 2, 254 § 1

COMMENTARY

Davide Cito

Theological formation

The *CIC* devotes two canons (this one and c. 254) to establishing the principles that should guide theological studies. They are rather general in nature and therefore need greater specificity at the level of a system of particular norms.

These studies fulfill a decisive function in the life and ministry of the priest. From a juridical perspective, their roots can be found in the right-

duty of the faithful to know and live the mystery of salvation (c. 217) and to proclaim it to all people (c. 211); and, even more specifically, they constitute an explicitation of the right-duty of formation for the ministry. This primary function of theological studies has been reaffirmed by the Roman Pontiff: "The intellectual formation of the future priest is based and built, above all, on the study of sacred doctrine, of theology" (*PDV* 53).

1. Drawing almost literally on the words of *Optatam totius* 16, § 1 sets the general criteria pertaining to the end and methodology with which this theological formation is to be taught.

Similar to the provisions set forth in c. 248 (see commentary), the primary and necessary end of theological studies is to nourish the spiritual life and consequently, to seek, the capacity to proclaim and defend properly the message of the Gospels. "Intellectual formation in theology and formation in the spiritual life, in particular, the life of prayer, meet and strengthen each other, without detracting in any way from the soundness of research or from the spiritual tenor of prayer" (*PDV* 53).

The intrinsic connection which exists between the mystery of Christ and of theological studies, entails, as a necessary consequence, theological formation embracing all of Catholic doctrine as a whole. In effect, theological formation "should lead the candidate for the priesthood to a complete and unified vision of the truths which God has revealed in Jesus Christ and of the Church's experience of faith. Hence the need both to know 'all' the Christian truths, without arbitrarily selecting among them, and to know them in an orderly fashion" (*PDV* 54; cf. c. 254 § 1).

The particular character of theological studies, which are not limited to a simple acquisition of religious erudition but also are the work of "a believer who asks himself questions about his own faith with the aim of reaching a deeper understanding of the faith itself" (*PDV* 53), demands that, both on the part of the professors as well as the students, that intellectual effort be made "in the light of faith and under the guidance of the Magisterium," since, otherwise, it would be unable to achieve its end.[1]

2. The importance of the study of sacred scripture is reaffirmed in § 2, defined in *Optatam totius* 16 as "the soul of all theology" (cf. *DV* 24; *PDV* 54), which should inform all the theological disciplines (cf. *RFIS* 78).

3. Paragraph 3, while it entrusts the task of preparing specific programs of study of the several theological and auxiliary disciplines to the national *Rationes* (cf. c. 242), it lists those basic subjects that should be

1. Regarding the relationship between theology and the Magisterium, cf. SCCE, "La formazione teologica dei futuri sacerdoti," February 22, 1976, nos. 44–47, in *EV* V (Bologna 1979), nos. 1811–1814; CDF, Instr. *Donum Veritatis*, regarding the ecclesial vocation of clergymen, May 24, 1990, nos. 13–14, 21–22, in the supplement to *L'Osservatore Romano*, no. 146, June 27, 1990; *PDV*, 55.

taught during the course of theological studies. *RFIS*, 78–80 summarily describes the methodology which should be followed in the principle disciplines: sacred scripture, sacred liturgy, dogmatic theology, moral theology, pastoral theology, ecclesiastical history and canon law. It also prescribes (n. 81), just as it does for the programs of study in the philosophical curriculum, that the complete description of the theological courses be listed in the national *Rationale*, giving the program, the length and weekly schedule of lessons.

In documents prior and subsequent to the *CIC*, the CCE has given more specific instructions about the study of certain theological disciplines or relevant aspects of them. Following a chronological order, the following documents can be mentioned: Circular Letter *Postremis hisce annis* (April 2, 1975) on the study of canon law;[2] Instruction *In ecclesiasticam futurorum* (June 3, 1979) on liturgical formation;[3] the document *In questi ultimi decenni* (December 30, 1988) on the social doctrine of the Church;[4] Instruction *Inspectis dierum* (November 10, 1989) on the study of the Fathers of the Church.[5]

2. *EV* V (Bologna 1979), nos. 1221–1242
3. *EV* VI (Bologna 1980), nos. 1550–1704.
4. *EV* XI (Bologna 1991), nos. 1901–2109.
5. *EV* XI (Bologna 1991), nos. 2831–2897.

253 **§ 1. Ad magistri munus in disciplinis philosophicis,theologicis et iuridicis, ab Episcopo aut ab Episcopis, quorum interest, iitantum nominentur qui, virtutibus praestantes, laurea doctorali aut licentia potiti sunt in universitate studiorum aut facultate a Sancta Sede recognita.**

§ 2. Curetur ut distincti totidem nominentur magistri qui doceant sacram Scripturam, theologiam dogmaticam, theologiam moralem, liturgiam, philosophiam, ius canonicum, historiam ecclesiasticam, aliasque, quae propria methodo tradendae sunt, disciplinas.

§ 3. Magister qui a munere suo graviter deficiat, ab auctoritate, de qua in § 1, amoveatur.

§ 1. The Bishops concerned are to appoint as teachers in philosophical, theological and juridical subjects only those who are of outstanding virtue and have a doctorate or a licentiate from a university or faculty recognised by the Holy See.

§ 2. Care is to be taken that different professors are appointed for sacred Scripture, dogmatic theology, moral theology, liturgy, philosophy, canon law and church history, and for other disciplines which are to be taught by their own distinctive methods.

§ 3. A professor who seriously fails in his or her duty is to be removed by the authority mentioned in § 1.

SOURCES: § 1: c. 1366 § 3; Pius PP. XI, m. p. *Bibliorum scientiam*, 27 apr. 1924 (*AAS* 16 [1924] 180–182); *SS* 362; *OT* 5; *RFIS* 32–35; *DPMB* 192; SCCE Instr. *Tra i molteplici*, 22 feb. 1976, 118–119
§ 2: c. 1366 § 3; *RFIS* 32
§ 3: *RFIS* 33

CROSS REFERENCES: § 1: cc. 239 § 1, 254 § 1, 261, 804 § 2, 812, 817, 818, 819, 833, 6°
§ 2: c. 252 § 3
§ 3: cc. 192–195, 292, 810 § 1, 818

COMMENTARY

Davide Cito

Faculty of the major seminary

Among the duties of greatest prominence in the educational team are those of the professors. "Those who ... introduce future priests to sacred doctrine and accompany them in it have a particular educational responsibility. Experience teaches that they often have a greater influence on the development of the priest's personality than other educators" (*PDV* 67).[1]

Besides the qualities generically described in recent *Guidelines*[2] intended to guide the selection of educators, the canon that is the subject of our commentary lays down some broad requirements about: *a)* appointment; *b)* removal; *c)* the number of professors at a seminary.

In order to demarcate the scope of the canon, it is necessary to make a preliminary observation that, since the seminary is a public structure belonging to the ecclesiastical organization, even though the canon considers professors in philosophical, theological or juridical disciplines directly, it also places professors of other subjects within a situation of particular dependence on the ecclesiastical authority,[3] and therefore, the system of norms provided for the faculty in the "sacred" disciplines is, by analogy, applicable to them.

Secondly, it must be said that the fact that the seminary students pursue philosophical-theological studies in other places does not diminish the responsibility of oversight that the bishop and superiors have towards the quality of teaching given to their own seminarians; and, even though they may not possess the power of removal indicated in § 3, they have the duty to inform the academic authorities about any possible irregularities which they observe in the professors.

1. Moving now to a review of the system of norms affecting the *appointment* of professors, this canon, in § 1, establishes a double series of requirements: *a)* that they be of outstanding virtue; *b)* that they have "a doctorate or a licentiate from a university or faculty recognized by the Holy See."

a) The requirements of personal character referred to by the expression "of outstanding virtue," as provided for in other canons affecting

1. Cf. CCE "Direttive sulla preparazione degli educatori nei seminari," November 4, 1993, no. 43, in the supplement to *L'Osservatore Romano* no. 8, January 12, 1994.
2. Cf. Ibid.
3. Cf., e.g., *Acuerdo* between the Holy See and the State of Italy, February 18, 1984, arts. 3,2; 10.

teachers (cf. cc. 804 § 2, 810 § 1), involve true doctrine, the witness of their Christian life, and their teaching ability. In the words of John Paul II, they should be "men of faith who are full of love for the Church, convinced that the one who really knows the Christian mystery is the Church as such and, therefore, that their task of teaching is really and truly an ecclesial ministry, men who have a richly developed pastoral sense which enables them to discern not only content but forms that are suitable for the exercise of their ministry. In particular, what is expected of teachers is total fidelity to the magisterium; for they teach in the name of the Church, and because of this, they are witnesses to the faith" (*PDV* 67).

Currently, in contrast to c. 1360 § 1 *CIC*/1917, which established that the priestly condition be a mandatory requirement for professors, by virtue of c. 229 § 3 and *Direttive sulla preparazione degli educatori nei seminari*, 20,[4] the prudent inclusion of lay professors can be established, by taking into account that *RFIS* 33 affirms that "for the sacred disciplines, those professors should generally be priests."[5]

Finally, by virtue of c. 833, 6°, professors of philosophy and theology are obligated to make a profession of faith and swear an oath of loyalty in the presence of the local ordinary or of his delegate.[6]

The appointment of professors falls upon the bishop, if it has not been otherwise provided (cf. *RFIS* 33), or upon the bishops concerned, if it involves an inter-diocesan seminary, in which case, the rector and the faculty of professors who might propose suitable candidates should be consulted (cf. *RFIS* 33).

b) In regard to the academic requirements, the canon demands that professors have earned the doctorate or licentiate from a faculty or university recognized by the Holy See. It has been pointed out that a literal reading of the canon makes this requirement particularly demanding, above all, in those areas where there exists a scarcity of clergy.[7] This situation not withstanding, the proposal to widen the academic suitability to those who were "vere periti"[8] was not accepted. In any event, there remains the possibility of dispensing with this requirement by virtue of c. 87,[9] even though the aim of *Optatam totius* 5 and 18 continue to be fully

4. Also cf. *DPMB* 192, in *EV* IV (Bologna 1978), no. 2257.

5. Regarding the prohibition of seminarian professors that have been expelled from the priesthood, cf. SCDF, Litt. circ. *Litteris encyclicis*, January 13, 1971, Prot. no. 128/61, norm VI, no. 4, in *EV* IV (Bologna 1978), no. 102.

6. Cf. CDF, "Professio fidei et iusiurandum fidelitatis in suscipiendo officio nomine Ecclesiae exercendo," in *AAS* 81 (1989), pp. 104–106.

7. Cf. T. Rincón-Pérez, commentary on c. 253, in *Pamplona Com.*

8. Cf. *Comm.*14 (1982), p. 54; L. Chiappeta, *Il Codice di Diritto Canonico*, I (Naples 1988), p. 327.

9. This possibility seems to have been considered a rather frequent practice by SCEP, Litt. circ. *La Congregazione*, Prot. 1931/71, April 25, 1987, no. 7, in *EV* X (Bologna 1990), no. 1744.

valid, in the sense of promoting adequate academic qualifications of teachers.

2. Reinforcing the precepts contained in c. 1366 § 3 *CIC*/1917, § 2 invites us to have different professors for each of the fundamental disciplines, considering the methodological requirements of the various subject matters. However, as *RFIS* 32 specifies, attention should be given to teaching conditions and the number of students, circumstances which may possibly justify a derogation from the guidelines of this canon.

3. The competent authority for making appointments also has the power to remove a teacher in the event that he or she "seriously fails in fulfilling his or her duty" (§ 3). This paragraph, by virtue of its generic character, leaves ample discretion in evaluating instances of non-performance. This has caused some authors[10] to suggest the need for this norm to be clarified with greater specification by particular legislation, either to make it clear that the act of removal constitutes a duty of the bishop, upon whom devolves the duty to safeguard the well-being of the seminary, or to avoid possible arbitrariness.

In any case, even in the event that specific precepts which would provide causes for removal were to be lacking, by taking into account c. 194 (in regard to removal *ipso iure* from the ecclesiastical office), and c. 810 (about the removal of professors in Catholic and ecclesiastical universities; cf. the reference made by c. 818), certain possible situations involving serious non-performance of duty can already be formulated, based solely on the system of norms set forth in the Code.

10. T. RINCÓN-PÉREZ, commentary on c. 253, in *Pamplona Com.*

254 **§ 1. Magistri in disciplinis tradendis de intima universae doctrinae fidei unitate et harmonia iugiter solliciti sint, ut unam scientiam alumni se discere experiantur; quo aptius id obtineatur, adsit inseminario qui integram studiorum ordinationemmoderetur.**

§ 2. Ita alumni edoceantur, ut et ipsi habiles fiant ad quaestiones aptis investigationibus propriis et scientifica methodo examinandas habeantur igitur exercitationes, in quibus, sub moderamine magistrorum, alumni proprio labore studia quaedam persolvere discant.

§ 1. In their lectures, the professors are to be continuously attentive to the intimate unity and harmony of the entire doctrine of faith, so that the students are aware that they are learning one science. To ensure this, there is to be someone in the seminary who is in charge of the overall organisation of studies.

§ 2. The students are to be taught in such a way that they themselves are enabled to research various questions by their own appropriate investigations and in a scientific manner. There are, therefore, to be assignments in which, under the guidance of the professors, the students learn to work out certain subjects by their own efforts.

SOURCES: § 1: *SS* 363; *SC* 16; *OT* 5, 17; *RFIS* 27, 63, 77, 90; SCCE Instr. *Tra i molteplici*, 22 feb. 1976, 121–127
§ 2: *OT* 17; *RFIS* 38, 91; SCCE Instr. *Tra i molteplici*, 22 feb. 1976, 71

CROSS REFERENCES: cc. 239 § 1, 261 § 2

COMMENTARY

Davide Cito

Duties of the professors and of the "moderator of studies"

1. Together with the offices indicated in c. 239 § 1, paragraph 1 of this canon provides for the existence of a "moderator studiorum," called the "praefectus studiorum" in the *RFIS* 27, who has the mission of coordinating the study plan so as to encourage a consistent theological formation of the seminarians.

The functions of the "moderator studiorum" which emerge from the system of codal norms (cf. c. 261 § 2) and from those documents which deal with this figure[1] in greater detail, can be summarized in the actions of stimulating, coordinating, and monitoring the work of the professors, so as to ensure that teaching acquires an integrated and synthetic character.

By taking into account the inevitable generic character of this canon, from a juridical perspective the specific powers of the "moderator studiorum" should be specified in the national *Rationale* or in the rule of the seminary (cf. cc. 242–243).[2]

Pastores dabo vobis 54 has reaffirmed once again the importance for theological education to preserve its own unified character of knowledge, thereby avoiding a search for new approaches and formulations in each of the disciplines (such as *Optatam totius* 17 seeks in all other respects) that would lead to a fragmentation that could make one lose sight of the central truths of the faith,[3] thereby giving priority to contingent aspects and problems. It has emphasized the desire "to help the candidate build a synthesis which will result from the contributions made by different theological disciplines, the specific nature of which will acquire genuine value only in their profound coordination."

2. Paragraph 2, reaffirmed in *RFIS* 91, offers a classification of the educational activities directed at stimulating the participation of the student and at encouraging the learning of a scientific method. The list is offered solely by way of example, and it is the mission of the program of study to plan its scheduling and development.

1. Cf. *RFIS*, 27, 90; SCCE, "La formazione teologica dei futuri sacerdoti," February 22, 1976, no. 71, in *EV* V (Bologna 1979), nos. 1839–1845.
2. Cf., e.g., "'Rationale studiorum' dei seminari maggiori d'Italia," June 10, 1984, no. 105, in *Enchiridion CEI*, III (Bologna 1986), no. 316.
3. Cf. SCCE, "La formazione teologica dei futuri sacerdoti," cit., no. 69, in *EV*, cit, no. 1837.

255 **Licet universa alumnorum in seminario formatio pastoralem finem persequatur, institutio stricte pastoralis in eodem ordinetur, qua alumni principia et artes addiscant quae, attentis quoque loci ac temporis necessitatibus, ad ministerium Dei populum docendi, sanctificandi et regendi exercendum pertineant.**

Although the whole formation of students in the seminary has a pastoral purpose, a specifically pastoral formation is also to be provided there; in this the students are to learn the principles and the techniques which, according to the needs of place and time, are relevant to the ministry of teaching, sanctifying and ruling the people of God.

SOURCES: c. 1365 § 3; SCSUS Let., 26 apr. 1920, IX D; *SS* 363; *OT* 4, 19; *RFIS* 79, 94; SCCE Instr. *Tra i molteplici*, 22 feb. 1976, 102–106

CROSS REFERENCES: cc. 244, 248, 1029

COMMENTARY

Davide Cito

Necessity of a specifically pastoral formation

This is the first of four canons devoted to pastoral formation, and it establishes in a general way the need to offer students a preparation specifically directed to the exercise of the ministry.

The pastoral dimension which should characterize the entire process of formation at the seminary was emphasized by *Optatam totius* 8, which inspired the first part of this canon, when it indicated that "the whole training of students should have as its object to make them true shepherds of souls after the example of our Lord Jesus Christ, teacher, priest and shepherd."

This acquires also special significance from a juridical point of view, not only because it establishes the focus which should guide the various dimensions of formation in the seminary, but, above all, because it expresses in a synthetic way the background criteria which should serve to evaluate the suitability of candidates to receive orders (cf. c. 1029).

The guidelines contained in *Optatam totius* 4—developed above all in *RFIS*, 94–95, and in the documents on theological formation of future

priests,[1] nos. 102–106—have been recently adopted in *Pastores dabo vobis* 57–58, for the purpose of determining those features which pastoral formation should possess.

Such formation is expressed in three essential moments, reciprocally coordinated with each other: *a*) the study of the true theological discipline itself, pastoral or practical theology, because "pastoral theology is not just an art. Nor is it a set of exhortations, experiences and methods. It is theological in its own right, because it receives from the faith the principles and criteria for the pastoral action of the Church in history" (*PDV* 57); *b*) the operative application of such study "through involvement in certain pastoral services which the candidates to the priesthood should carry out, with the necessary progression and always in harmony with their other educational commitments" (*PDV* 57); *c*) internal maturation of the candidate which makes him grow in pastoral sensitivity and directs him towards "the conscious and mature assumption of his responsibilities, building the interior habit of evaluating problems and establishing priorities and looking for solutions on the basis of honest motivations of faith and according to the theological demands inherent in pastoral work" (*PDV* 57).

In regard to the abrogated Code, c. 1365 § 3 dealt with this aspect by prescribing that lessons in pastoral theology be taught with practical exercises about the way to perform specific functions, such as teaching catechesis, hearing confessions, etc. The current system of norms, inspired in the reflections of the Council, presents in a more complete way those requirements involved in the pastoral ministry that should be taken into account within the scope of seminary formation. However, the provisions contained in this canon and in the three following canons offer, above all, general guidelines, whose specific subject matter should be specified in particular norms.

1. CCE, "La formazione teologica dei futuri sacerdoti," February 22, 1976, in *EV* V (Bologna 1979), nos. 1877–1881.

CIC

256 **§ 1. Diligenter instruantur alumni in iis quae peculiari ratione ad sacrum ministerium spectant, praesertim in arte catechetica et homiletica exercenda, in cultu divino peculiarique modo in sacramentis celebrandis, in commercio cum hominibus, etiam noncatholicis vel non credentibus, habendo, in paroecia administranda atque in ceteris muneribus adimplendis.**

§ 2. Edoceantur alumni de universae Ecclesiae necessitatibus, ita ut sollicitudinem habeant de vocationibus promovendis, de quaestionibus missionalibus, oecumenicis necnon de aliis, socialibus quoque, urgentoribus.

§ 1. Students are to be carefully instructed in whatever especially pertains to the sacred ministry, particularly in catechetics and homiletics, in divine worship and in a special way in the celebration of the sacraments, in dealing with people, including non-Catholics and unbelievers, in parish administration and in the fulfillment of other tasks.

§ 2. The students are to be instructed about the needs of the universal Church, so that they may have solicitude for encouraging vocations, for missionary and ecumenical questions, and for other pressing matters, including social problems.

SOURCES: § 1: *SCCong* Normae, 28 iun. 1917, 34–37 (*AAS* 9 [1917] 328–334); SCSUS Let., 8 sep. 1926 (*AAS* 18 [1926] 453–455); SCSUS Litt., 28 aug. 1929 (*AAS* 22 [1930] 146–148); SCSUS Instr. *La formazione*, 21 dec. 1944 (*AAS* 37 [1945] 173–176); SCSUS Let., 15 aug. 1949 (*AAS* 41 [1949] 618–619); SCSUS Litt. circ., 3 sep 1963, *SS* 364; *OT* 20; SCSUS Instr. *Doctrina et exemplo*, 25 dec. 1965, 44–69; SNB Instr. *Documentum quod*, 28 aug. 1968, II/1,1 (*AAS* 60 [1968] 701–702); *SCCong* Instr. *Peregrinans in terra*, 30 apr. 1969, II, 3, B, a (*AAS* 61 [1969] 373–374); *RFIS* 518, 94, 95; SCCE Instr. *In ecclesiasticam*, 3 iun. 1979, 59

§ 2: PIUS PP. XI, Enc. *Rerum Orientalium*, 8 sep. 1928 (*AAS* 20 [1928] 284–285); SCSUS Litt., 28 aug. 1929 (*AAS* 22 [1930] 146–148); SCSUS Let., 10 mar. 1932; SCSUS Litt. circ., 27 ian. 1935; PIUS PP. XI, Enc. *Divini Redemptoris*, 19 mar. 1937 (*AAS* 29 [1937] 97–99); SCPF Decr. *Piae Unionis*, 14 apr. 1937 (*AAS* 29 [1937] 437, 440); PIUS PP. XII, Adh Ap. *Menti nostrae*, 23 sep. 1950 (*AAS* 42 [1950] 696–697); IOANNES PP. XXIII, Enc. *Mater et Magistra*, 15 maii 1961 (*AAS* 53 [1961]

453–454); SCSUS Litt. circ., 25 maii 1961; *CD* 6; *OT* 20; *AG* 39; PAULUS PP. VI, Enc. *Populorum progressio*, 26 mar. 1967 (*AAS* 59 [1967] 257–299); *RFIS* 69, 80, 96; SPCU Directorium, 16 apr. 1970 (*AAS* 62 [1970] 705–724); SCEP Litt. circ., 17 maii 1970; PAULUS PP. VI, Litt. Ap. *Octogesima adveniens*, 14 maii 1971 (*AAS* 63 [1971] 401–403); Syn. Bish. *Convenientes ex universo*, 30 nov. 1971 (*AAS* 63 [1971] 923–926); PONTIFICIA COMMISSIO DE SPIRITUALI MIGRATORUM ATQUE ITINERANTIUM CURA, Litt. circ., 26 maii 1978 (*AAS* 70 [1978] 357–359); IOANNES PAULUS PP. II, Enc. *Redemptor hominis*, 4 mar. 1979 (*AAS* 71 [1979] 282–285)

CROSS REFERENCES: —

COMMENTARY

Davide Cito

Pastoral formation in the principal fields of the priestly ministry

1. In direct relation to the preceding canon, § 1 of this canon, in an analogous way, although more completely than what was prescribed in c. 1365 § 3 *CIC*/1917, lists the primary areas for exercising sacred ministry which should be the subject of the pastoral formation taught at the seminary.

Those areas, which are indicated in the paragraph without any systematic or exhaustive treatment, reproduce *RFIS* 94 almost verbatim (inspired, in turn, in *Optatam totius* 19), and generically refer to the exercise of the ministry of the word, of the sacraments, and of pastoral guidance. They concern the following points: *a)* catechetical and homiletic activities; *b)* divine worship and the celebration of the sacraments; *c)* dialogue with people, including non-Catholics and unbelievers; *d)* administration of the parish; *e)* fulfillment of others tasks.

a) Catechesis and the forms of catechetical formation have been discussed in particular in the General Catechistical Directory (1997), in *EN* 44 and in *CT* 18–34. Insofar as homiletics are concerned, the term is understood in a wider sense than a reference to preaching, of which the homily constitutes a particular form (see c. 767 and commentary).

b) Since divine worship and, in particular, sacramental celebrations are public acts of the Church (cf. c. 837 § 1), in the liturgical pastoral formation, "greater insistence should be placed on pastoral precepts and in the instructions given by Bishops regarding the preparation and adminis-

tration of the sacraments."[1] Respect for norms regarding this subject, such as the way to protect the right of the faithful to participate in liturgical celebrations according to the will of the Church and not according to the personal preferences of the minister, has been stressed by the *Directory on the Ministry and Life of the Priest.*[2]

c) The capacity to initiate a dialogue with people is a requirement for proclaiming the Gospels to all people (cf. *OT* 19; *EN* 49–53) and forms part of those gifts (also emphasized in cc. 244–245) which trace the human make-up of the future priest and which are of significant importance in the performance of pastoral ministry.

d) Insofar as parish administration is concerned, it cannot be forgotten that functions with juridical consequences within the canonical and civil spheres fall upon the parish priest;[3] therefore, it becomes understandable that *RFIS* 94 specifies that, in the formation directed towards this end, economic issues should also be emphasized.

2. The text of § 2 is drawn directly from *RFIS* 96, with the clause regarding the solicitude to promote the vocations is the responsibility of the entire Church, as provided in c. 233.

Concern for the needs of the universal Church is pointed out in *Pastores dabo vobis* 18 (on the basis of *PO* 10 and *OT* 20), as a characteristic trait of the make-up of the priest required by the very nature of ministry: "By the very nature of their ministry, they should therefore be penetrated and animated by a profound missionary spirit and with that truly Catholic spirit which habitually looks beyond the boundaries of Diocese, country or rite to meet the needs of the whole Church, being prepared in spirit to preach the Gospel everywhere."

The importance of missionary formation, stressed in Litt. circ. *Puisque la "Rationale,"*[4] has been reaffirmed by *Redemptoris Missio* 83, as a special duty of seminary professors.

In relation to ecumenism, DE/1993 192–195 entrusts to the Bishops' Conferences the task of establishing norms which are to be included in the national *Rationale*, to promote and regulate ecumenical cooperation in the seminary.

1. SCCE, Instr. *In ecclesiasticam futurorum*, June 3, 1979, no. 59, in *EV* VI (Bologna 1980), no. 1621.
2. CC, *Directory on the Ministry and Life of the Priest*, January 31, 1994, no. 64 c.
3. Cf. M. Marchesi, *Come amministrare la parrocchia* (Bologna 1989).
4. SCEP, Litt. circ. *Puisque la "Rationale,"* May 17, 1970, in *EV* III (Bologna 1977), nos. 2543–2550.

257 **§ 1. Alumnorum institutioni ita provideatur, ut non tantum Ecclesiae particularis in cuius servitio incardinentur, sed universae quoque Ecclesiae sollicitudinem habeant, atque paratos se exhibeant Ecclesiis particularibus, quarum gravis urgeat necessitas, sese devovere.**

§ 2. Curet Episcopus dioecesanus ut clerici, a propria Ecclesia particulari ad Ecclesiam particularem alterius regionis transmigrare intendentes, apte praeparentur ad ibidem sacrum ministerium exercendum, ut scilicet et linguam regionis addiscant, et eiusdem institutorum, condicionum socialium, usuum et consuetudinem intellegentiam habeant.

§ 1. The formation of students is to ensure that they are concerned not only for the particular Church in which they are incardinated, but also for the universal Church, and that they are ready to devote themselves to particular Churches which are beset by grave needs.

§ 2. The diocesan Bishop is to ensure that clerics who intend to move from their own particular Church to a particular Church in another region, are suitably prepared to exercise the sacred ministry there, that is, that they learn the language of the region, and have an understanding of its institutions, social conditions, usages and customs.

SOURCES: § 1: *SCCong* Litt. circ., 24 oct. 1951 (*AAS* 44 [1952] 231–232); PIUS PP. XII, Let. *Ad Ecclesiam Christi*, 29 iun. 1955 (*AAS* 47 [1955] 540–543); PAULUS PP. VI, Alloc., 9 iul. 1963 (*AAS* 55 [1963] 684–685); *CD* 6; *OT* 20; *PO* 10; PAULUS PP. VI, Alloc., 3 iul. 1966 (*AAS* 58 [1966] 636–639); *ES* I, 3 § 1; *RFIS* 96; SCEP Litt. Circ., 17 maii 1970; PONTIFICIA COMMISSIO DE SPIRITUALI MIGRATORUM ATQUE ITINERANTIUM CURA, Normae, 29 iun. 1974; *PA* 23
§ 2: PIUS PP. XII, Exhortatio *In auspicando*, 28 iun. 1948 (*AAS* 40 [1948] 375); PIUS PP. XII, Enc. *Evangelii praecones*, 2 iun. 1951 (*AAS* 43 [1951] 507); *SCCong* Litt. circ., 24 oct. 1951 (*AAS* 44 [1952] 231–232); *CD* 6; *OT* 20; *AG* 38; *PO* 10; *ES* I, 3 §§ 1 et 3; *RFIS* 67; *PA* 23

CROSS REFERENCES: cc. 244, 249, 271 § 1

COMMENTARY

Davide Cito

Formation for the solicitude of the entire Church

1. "Membership and dedication to a particular Church does not limit the activity and life of the presbyter to that Church: a restriction of this sort is not possible, given the very nature both of the particular Church (87) and of the priestly ministry" (*PDV* 32).

The text of the canon, drawn from *Ecclesiae Sanctae* I, 3 §§ 1 and 3, stresses an orientation that should reflect the pastoral formation of the seminary, and which is justified, not only in order to face "that increasingly serious demand of the Church today, which arises from an unequal distribution of the clergy" (*PDV* 32), but also by virtue of the universal dimension of the priesthood.[1]

This entails the need for a special sensitivity on the part of the seminary formation department, so that they educate students with a generous availability towards the problems of other particular churches.[2]

2. At the same time § 2 bears a relationship to c. 271 § 1, which invites the bishop to allow the clergy permission to be transferred to those regions suffering from a scarcity of clergy.

Suitability for the fruitful exercise of the sacred ministry (cf. c. 244) implies a duty to acquire those means needed for effective integration into the new ecclesial reality. It is clear that this falls to the interested party, even though it also falls to the bishop, to make available whatever may be needed for an adequate preparation.

1. Cf. *PO*, 10; CC, *Directory on the Ministry and Life of the Priest*, January 31, 1994, no. 14.

2. Cf. RM, 67; *PDV* 59; CCE, "Direttive sulla preparazione degli educatori nei seminari," November 4, 1993, no. 28, in the supplement to *L'Osservatore Romano* no. 8, January 12, 1994.

258 **Ut apostolatus exercendi artem in opere ipso etiam addiscant, alumni, studiorum curriculo decurrente, praeserti, vero feriarum tempore, praxi pastorali initientur per opportunas, sub moderamine semper sacerdotalis periti, exercitationes, alumnorum aetati et locorum condicioni aptatas, de iudicio Ordinarii determinandas.**

In order that the students may also by practice learn the art of exercising the apostolate, they are in the course of their studies, and especially during holiday time, to be initiated into pastoral practice by suitable assignments, always under the supervision of an experienced priest. These assignments, appropriate to the age of the student and the conditions of the place, are to be determined by the Ordinary.

SOURCES: *SS* 364; *OT* 21; *RFIS* 97–99; *DPMB* 195; SCCE Normae, 11 apr. 1974, 88

CROSS REFERENCES: c. 235 § 2

COMMENTARY

Davide Cito

Formation in the apostolate

Inspired by *Optatam totius* 21, whose text it substantially reproduces, the canon we are now commenting upon establishes that students should supplement the formation they receive at the seminary with practical pastoral experiences, to be undertaken throughout the course of the year.

Given the variety of possible situations, the text only sets down some general criteria which, from a juridical point of view, attributes to the ordinary: *a)* the duty to provide for these activities to be undertaken; *b)* the evaluation of the experience and the forms in which the concrete experiences are to take.

a) The need is that the pastoral formation of students not be limited to theoretical learning, but that it possess an operational application (cf. *OT* 21; *PDV* 57). Therefore, from the beginning of the time devoted to formation in the seminary, students are to pursue activities of this type, harmoniously distributed, so as to be compatible with the demands of study (cf. *RFIS* 98).

b) Evaluation should be done by taking into account the pastoral needs as well as the specific circumstances of each student. In this sense, the canon makes reference only to age, but all other circumstances should be taken into account as well: temperament, character, health, preparation, etc.

Furthermore, so that this basic and gradual approach towards the exercise of ministry can be integrated in an appropriate way into the spiritual and intellectual formation of the student, it should be pursued under the guidance of an expert priest.

RFIS 98 offers some examples of activities, including "catechetical teaching, actively participating in the liturgical celebrations of the parish on feast days, visiting the sick, the poor, and those in prison, assisting priests who have the pastoral care of young people or of workers, etc."

Participation in activities relating to the parish has been stressed by *Pastores dabo vobis* 58: "When it comes to choosing places and services in which candidates can obtain their pastoral experience, the parish should be given particular importance for it is a living cell of local and specialized pastoral work in which they will find themselves faced with the kind of problems they will meet in their future ministry."

259 **§ 1. Episcopo dioecesano aut, si de seminario interdioecesano agatur, Episcopis quorum interest, competit quae ad seminarii superius regimen et administrationem spectant, decernere.**

§ 2. Episcopus dioecesanus aut, si de seminario interdioecesano agatur, Episcopi quorum interest, frequenter seminarium ipsi visitent, in formationem suorum alumnorum necnon in institutionem, quae in eodem tradatur, philosophicam et theologicam invigilent, et de alumnorum vocatione, indole,pietate ac profectu cognitionem sibi comparent, maxime intuitu sacrarum ordinationum conferendarum.

§ 1. It belongs to the diocesan Bishop or, in the case of an inter-diocesan seminary, to the Bishops concerned to determine those matters which concern the overall control and administration of the seminary.

§ 2. The diocesan Bishop or, in the case of an inter-diocesan seminary, the bishops concerned, are frequently to visit the seminary in person. They are to oversee the formation of their students, and the philosophical and theological instruction given in the seminary. They are to inform themselves about the vocation, character, piety and progress of the students, with a view particularly to the conferring of sacred orders.

SOURCES: § 1: c. 1357 § 1; SCSUS Litt., 9 oct. 1921; BENEDICTUS PP. XV, Let. *Saepe Nobis*, 30 nov. 1921 (*AAS* 13 [1921] 557); SCSUS Normae, 7 mar. 1929; SCSUS Litt. circ., 6 iul. 1966; *DPMB* 191
§ 2: c. 1357 § 2; SCSUS Let., 26 apr. 1920, II; BENEDICTUS PP. XV, Let. *Saepe Nobis*, 30 nov. 1921 (*AAS* 13 [1921] 557); SCSUS Litt. circ., 25 iul. 1928; SCSUS Litt. circ., 6 iul. 1966; *RFIS* 22; *DPMB* 191, 195

CROSS REFERENCES: cc. 241, 242, 243

COMMENTARY

Davide Cito

Overall governance and administration of the seminary

1. The former Code provided a differentiated system for governance and administration of diocesan and inter-diocesan seminaries (cf. c. 1357 §§ 1 and 4 *CIC*/1917), which pertained, respectively, to the diocesan bishop and the Holy See. The current system of norms, however, attributes these functions to the diocesan authority (diocesan bishop or bishops concerned), including, in the case of inter-diocesan seminaries reserving to the Apostolic See, their erection and approval of their statutes (cf. *PDV* 113).

In order to indicate the competence of the bishop over the seminary, the canon uses an expression equivalent to that which was adopted in the abrogated Code ("superius regimen et administrationem"), and includes, in addition to the powers indicated in the other canons (cf. cc. 235 § 1 241, 243, 253 § 1, 257 § 2, 263, 264 § 1), all those matters concerning the spiritual and material governance of the seminary, pursuant to universal norms and the national *Rationale* (cf. c. 242), according to the matters established in the statutes.

As some authors have stressed, the fact that the "superius regimen" belongs in the inter-diocesan seminaries to the bishop's "quorum interest," may become problematic in practice,[1] if the avenues for the joint exercise of such power have not been specified in the statues or in other agreements.

2. "The duty and the inherent and exclusive right that belongs to the Church in the formation of those who are intended for the sacred ministry comes to completion when the Bishop selects, calls, forms and admits to the sacrament of orders those candidates whom he considers to be suitable."[2]

A manifestation of the personal responsibility of the bishop towards the formation of candidates to the priesthood and their suitability to receive orders are the duties listed in § 2, which reproduces the substance of c. 1357 § 2 *CIC*/1917. The fact that the bishop makes use of the cooperation of seminary superiors to carry out this function that belongs to him

1. Cf. A.M. PUNZI NICOLÓ, *Seminari* I, p. 4, in *Enciclopedia Giuridica* (Rome 1992).
2. CCE, "Direttive sulla preparazione degli educatori nei seminari," November 4, 1993, no. 18, in the supplement to *L'Osservatore Romano* no. 8, January 12, 1994.

does not release him, in effect, from the duty of intervening personally, as indicated by *DPMB* 191, and as reaffirmed by *Pastores dabo vobis* 65: "it becomes especially significant of his responsibility towards the formation of candidates to the priesthood that the bishop visit them often and in some way *is* with them."[3]

3. Also cf. ibid.

260 **Rectori, cuius est cotidianum moderamen curare seminarii, ad normam quidem institutionis sacerdotalis Rationis ac seminarii ordinationis, omnes in propriis muneribus adimplendis obtemperare debent.**

In the fulfilment of their duties, all must obey the rector, who is responsible for the day to day direction of the seminary, in accordance with the norms of the Programme of priestly formation and the rule of the seminary.

SOURCES: cc. 1360 § 2, 1369; SCSUS Let., 9 oct. 1921, II; SCSUS Let., 2 maii 1928; SCSUS Normae, 7 mar. 1929; *RFIS* 29

CROSS REFERENCES: cc. 239 § 1, 252, 253

COMMENTARY

Davide Cito

Office of the rector

This canon repeats c. 1360 § 2 *CIC*/1917 exactly, with the exception of the specification that the rector is responsible for the day-to-day direction of the seminary, according to the norm of the *RFIS* and the seminary rule.

The position of the rector is that of primary collaborator with the bishop in the formation of candidates for the priesthood, to whom, therefore, the members of the seminary community owe their obedience.

His powers are described in the *Direttive sulla preparazione degli educatori nei seminari*, which affirms that "he represents the Bishop; he is the one who is primarilly responsible for the life of the seminary, in addition to representing [the Bishop] in the ecclesial, as well as the civil, arena. He continues and encourages the formation of students in all aspects, ensuring their harmony and reciprocal integration. By accepting and heeding the advice and assistance of those working with him, responsibility falls to him to give a summary judgment to the Bishop about the suitability for admission into the seminary, at the various phases along the educational journey, and for Holy Orders. If the educational commitment is, above all, a projection and creative and prudent expression of information and experiences, the Rector is the primary organizer and coordinator. It is incumbent upon him to ensure the uniform direction that is consistent with the decisions of the Bishop and the Church, thereby encouraging its

translation into practice, with maximum cooperation on the part of everyone."[1]

In essence, this involves a set of functions, whose content is not solely juridical, which, while they place the rector in a fiduciary relationship with the bishop, require, on the other hand, a just autonomy of action[2] and a certain stability (cf. *PDV* 66), which should be designated in the statutes of the seminary.

1. CCE, "Direttive sulla preparazione degli educatori nei seminari," November 4, 1993, no. 18, in the supplement to *L'Osservatore Romano* no. 8, January 12, 1994.
2. Cf. ibid., no. 17.

261 **§ 1. Seminarii rector itemque, sub eiusdem auctoritate, moderatores et magistri pro parte sua curent ut alumni normas Ratione institutionis sacerdotalis necnon seminarii ordinatione praescriptas adamussim servent.**

§ 2. Sedulo provideant seminarii rector atque studiorum moderatur ut magistri suo munere rite fungantur, secundum praescripta Rationis institutionis sacerdotalis ac seminarii ordinationis.

§ 1. The rector of the seminary is to ensure that the students faithfully observe the norms of the Programme of priestly formation and the rule of the seminary; under his authority, and according to their different positions, the moderators and professors have the same responsibility.

§ 2. The rector of the seminary and the director of studies are to see to it that the professors discharge their duties properly, in accordance with the provisions of the Programme of priestly formation and the rule of the seminary.

SOURCES: § 1: c. 1369 § 1; SCSUS Let., 9 oct. 1921, II; SCSUS Let., 2 maii 1928; SCSUS Litt. circ., 25 iul. 1928
§ 2: c. 1369 § 3; *RFIS* 38, 90

CROSS REFERENCES: cc. 239, 242–243, 260

COMMENTARY

Davide Cito

Duties of the rector

As with the preceding canon, the present canon also offers, with slight modifications, a provision contained in the abrogated code (c. 1369 §§ 1 and 3 *CIC*/1917).

Although the day-to-day direction of the seminary (c. 260) is entrusted to the rector, all components in the formation team have the duty to ensure that the norms in the plan of priestly formation (cf. c. 242) and the seminary rule (cf. c. 243) are faithfully observed.

This brings with it, on the part of educators, not only an attitude of responsibility towards the educational mission entrusted to them, but also

that "they maintain among themselves a frank and genuine communion. The unity of the educators not only helps the educational program to be put into practice properly, but also and above all it offers candidates for the priesthood a good example and a practical introduction to that ecclesial communion, which is a fundamental value of Christian living and of pastoral ministry" (*PDV* 66).

This does not involve, therefore, merely providing vigilance and control, but also of promoting the education in the discipline which, as *Optatam totius* 11 affirms, "should be regarded not only as a strong protection for community life and charity, but as a necessary part of the complete system of training. Its purpose is to inculcate self-control, to promote solid maturity of personality and the formation of those other traits of character which are most useful for the ordered and fruitful activity of the Church" (cf. *RFIS* 26).

Given the importance of intellectual and doctrinal formation, § 2 entrusts a specific area of competence to the rector and to the "moderator studiorum," with regard to the due performance of their duties on the part of educators.

262 Exemptum a regimine paroeciali seminarium esto: et pro omnibusqui in seminario sunt, parochi officium, excepta materia matrimoniali et firmo praescripto can. 985, obeat seminarii rector eiusve delegatus.

The seminary is to be exempt from parochial governance. For all those in the seminary, the function of the parish priest is to be discharged by the rector of the seminary or his delegate, with the exception of matters concerning marriage and without prejudice to the provisions of can. 985.

SOURCES: c. 1368; SCPF Resp., 4 apr. 1952

CROSS REFERENCES: cc. 530, 557 § 3, 985, 1177 § 3, 1196, 1245

COMMENTARY

Davide Cito

Exemption of the seminary

The canon establishes the exemption of the seminary from parish jurisdiction, thereby repeating faithfully c. 1368 *CIC*/1917, with the exception of the final reference for the possible provisions of the Apostolic See for certain seminaries. I judge the reasons for this exemption of the seminary are to be sought not so much in the juridic personality[1] or the need to guarantee its correct operation,[2] but rather in the particular relationship, also juridical, between the bishop and the candidates to the priesthood.

As *PDV* 68 emphasizes, the seminary constitutes a new community of faith members, brought together by the bishop. This entails not only some distancing from the community of origin, but also, above all, the instituting of a unique relationship between the bishop and the candidate. In effect, it is the bishop who "selects, calls, forms and admits to the sacrament of orders those candidates whom he considers to be suitable."[3]

The bishop has special obligations towards this community of faithful members at the seminary (cf. *PDV* 65), obligations which he fulfills either personally (cf. c. 259 § 2), or instead through the participation of

1. Cf. A.M. PUNZI NICOLÓ, voz *Seminari*, I, p. 3, in *Enciclopedia Giuridica* (Rome 1992).
2. Cf. V. DE PAOLIS, "La formazione dei chierici," in *Il fedele cristiano* (Bologna 1989), p. 125.
3. CCE, "Direttive sulla preparazione degli educatori nei seminari," November 4, 1993, no. 18, in the supplement to *L'Osservatore Romano* no. 8, January 12, 1994.

those persons called upon "to share a large part of his responsibility in this area."[4]

Therefore, the exemption is the consequence of the special pastoral care of the bishop towards candidates for the priesthood.[5]

The canon provides that the faculties which are held by the parish priest, as established by law (cf. cc. 530, 1177 § 3, 1196, 1245), be invested in the rector of the seminary, with the exception of those matters involving marriage and the limitation provided for in c. 985 about hearing the sacramental confessions of students. This does not mean, however, that the rector is comparable to the parish priest in other canonical matters (cf. e.g., cc. 1740–1752).[6]

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4. Ibid.
5. The commentators on *CIC*/1917 have already observed this: cf. F.X. WERNZ-P. VIDAL, *Ius canonicum*, t. IV, vol. II (Rome 1935), p. 123.
6. Cf. T. RINCÓN-PÉREZ, commentary on c. 262, in *Pamplona Com.*

263 **Episcopus dioecesanus vel, si de seminario interdioecesano agatur, Episcopi quorum interest,pro parte ab eis communi consilio determinata, curare debent ut provideatur seminarii constitutioni et conservationi, alumnorum sustentationi necnon magistrorum remunerationi aliisque seminarii necessitatibus.**

The diocesan Bishop must ensure that the building and maintenance of the seminary, the support of the students, the remuneration of the teachers and the other needs of the seminary are provided for. In an inter-diocesan seminary this responsibility devolves upon the Bishops concerned, each to the extent allotted by their common agreement.

SOURCES: c. 1357 § 1

CROSS REFERENCES: cc. 259, 264

COMMENTARY

Davide Cito

Economic needs of the seminary

The title on the formation of clerics concludes with two canons devoted to the economic needs of the seminary.

This canon provides that the diocesan bishop, or in the case of an inter-diocesan seminary those diocesan bishops concerned, furnish everything which affect the constitution, preservation and management of the seminary.

The list offered by this canon to describe the sources of expenses facing the bishops is offered merely by way of example, not only because such a list is incomplete,[1] but above all because the terminology used does not seek in any way whatsoever to define exactly what expenses must be assumed by the bishop. It only seeks to establish generically that the actual cost of maintaining the seminary is his responsibility.

In the case of the inter-diocesan seminary, this responsibility is divided among the bishops concerned, who must act according to their own agreement, as the canon does not offer any guidelines in this regard. In

1. Cf. F. COCCOPALMERIO, "La formazione al ministero ordinato," in *La Scuola Cattolica* 112 (1984), pp. 244–245.

this sense, the initial criterion that had guided the writers of the canon, that the contribution of the bishops be proportionate to the number of seminarians[2], was later abandoned, in favor of the actual availability of the dioceses, independent of the number of seminarians.[3]

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2. Cf. *Comm.* 8 (1976), pp. 151–152; 165–166.

3. Cf. *Comm.* 14 (1982), p. 60; L. CHIAPPETTA, commentary on c. 263, in *Il Codice di Diritto Canonico*, I (Naples 1988); T. RINCÓN-PÉREZ, commentary on c. 263, in *Pamplona Com.*

CITO

264 § 1. **Ut seminarii necessitatibus provideatur, praeter stipem de qua in can. 1266, potest Episcopus indioecesi tributum imponere.**

§ 2. **Tributo pro seminario obnoxiae sunt cunctae personae iuridicae ecclesiasticae etiam privatae, quae sedem in dioecesi habeant, nisi soliseleemosynis sustententur aut in eis collegium discentium vel docentium ad commune Ecclesiae bonum promovendum actu habeantur; huiusmodi tributum debet esse generale, reditibus eorum qui eidem obnoxii sunt proportionatum, atque iuxtanecessitates seminarii determinatum.**

§ 1. To provide for the needs of the seminary, the Bishop can, apart from the collection mentioned in can. 1266, impose a levy in the diocese.

§ 2. Every ecclesiastical juridical person is subject to the levy for the seminary, including even private juridical persons, which have an establishment in the diocese. Exception is made for those whose sole support comes from alms, or in which there is actually present a college of students or of teachers for furthering the common good of the Church. This levy should be general, proportionate to the revenues of those who are subject to it, and calculated according to the needs of the seminary.

SOURCES: § 1: c. 1355, 2°; *SCCong* Ind., 25 ian. 1945
§ 2: c. 1356

CROSS REFERENCES: cc. 238 § 1, 263, 1263, 1264, 1266

COMMENTARY

Davide Cito

Economic resources

The problem of collecting funds needed to maintain the seminary has always arisen, because there is generally no possibility of meeting the expenses through payment of the room and board on the part of the seminarians or any possible income that the seminary might earn as a juridic person.

In the abrogated Code (c. 1355 *CIC*/1917), three possible ways were provided through which the bishop could supplement any insufficiency

in seminary income: 1) a periodic collection in parish and rectoral churches; 2) levying a tax called the *seminary tax*, which can be traced back to the Council of Trent; 3) levying simple benefices.[1]

Even though the system of benefices has disappeared, the current legislation on the subject continues in substance, following the outlines of the prior system, because it provides for a collection by way of c. 1266 and the levying of a tax pursuant to the stipulations set forth in § 2.

The juridical system of taxes provided for under § 2 considers this tax a mere application of c. 1263[2] and not a part of doctrine as far as those liable for the tax are concerned. Thus, in order for it to be levied, the provision of c. 1263 shall be applied after consultation with the finance council and the presbyteral senate.

Furthermore, as it has been stressed, it does not follow the criterion adopted in the Code for the other taxes, which refers to subjection to the bishop, but instead, is strictly local in nature,[3] in that it assumes the configuration according to the norms of c. 1356 *CIC*/1917, but with even greater simplicity.

Those who are liable for this tax are all those public and private juridic persons who are domiciled within the diocese, with the exception of those supported by alms and college students or professors who seek to promote the common good of the Church.

It can indeed become problematic to attempt to explain the literal language of the canon, insofar as those exempted from the tax are concerned. However, it is necessary to consider that it constitutes the faithful reproduction of the last part of c. 1356 § 1 *CIC*/1917, whose rationale was that of excluding from the tax, subjects upon whom have been levied assessments similar to those of the seminary tax.[4]

1. Cf. F.X. Wernz-P. Vidal, *Ius canonicum*, t. IV, vol. II (Rome 1935), pp. 112–113.
2. Cf. V. de Paolis, "La formazione dei chierici," in *Il fedele cristiano* (Bologna 1989), pp. 126–127; T. Rincón, commentary on c. 264, in *Pamplona Com.*
3. Cf. J.T. Martín de Agar, "Bienes temporales y misión de la Iglesia," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 718.
4. Cf. *ibid.*; F.X. Wernz-P. Vidal, *Ius canonicum*, cit., pp. 113–114.

CAPUT II
De clericorum adscriptione seu incardinatione

CHAPTER II
The Enrollment or Incardination of Clerics

265 **Quemlibet clericum oportet esse incardinatum aut alicui Ecclesiae particulari vel praelaturae personali, aut alicui instituto vitae consecratae vel societati hac facultate praeditis, ita ut clerici acephali seu vagi minime admittantur.**

Every cleric must be incardinated in a particular Church or in a personal prelature, or in an institute of consecrated life or a society which has this faculty: accordingly, acephalous or 'wandering' clergy are by no means to be allowed.

SOURCES: c. 111; CodCom Resp. I, 1, 24 iul. 1939 (*AAS* 31 [1939] 321); *PO* 10

CROSS REFERENCES: cc. 266, 270, 271, 295, 368, 1019, 1025

COMMENTARY

Dominique Le Tourneau

1. This canon establishes a basic principle in the canonical system: there cannot exist acephalous or wandering clerics, in other words, those who lack an ecclesial title; they can only be ordained by taking into account their usefulness or the need of the Church (c. 1025 § 2). For this reason, ecclesiastical law provides that all clerics must be incardinated in either a particular church or a personal prelature, or in an institute of consecrated life or society which has received the power to incardinate from the Apostolic See.

The term "incardination" is of relatively recent use in ecclesiastical legislation; it can be found for the first time in a decree of SCCouncil, dated July 20, 1898. *CIC*/1917 "canonizes" it in cc. 111–117.

This does not prevent us from tracing the institute of incardination back to the age of the Apostles, since, from the time of the origin of the Church, clerics were ordained only for service to a specific church—in other words, those who were needed or useful for a specific church within the diocese, in which they were automatically "incardinated."

2. Setting aside the changes that this institute has undergone over the course of history, it seems appropriate, however, to point out the recent development as a result of the doctrine of Vatican Council II. This responds to a threefold need: to ensure a better geographic distribution of the clergy; to undertake specialized apostolates which are integrated into specific pastoral structures, different from the territorial structures; as well as to offer sacred ministers a chance to change their diocese for serious personal reasons. For these reasons, the Council returned to the original meaning of incardination as pastoral as well as ministerial service, leaving intact its true discipline. With this, it sought to provide for the needs of particular churches more effectively through a better distribution of clerics. In this sense, *Christus Dominus* 6 specifies: "They [the bishops] should arrange also, as far as it is possible, that some of their priests should go to these missions or dioceses (we are speaking of those missions and those countries that lack clergy) to exercise the sacred ministry there, either permanently or for a fixed period."

Similarly, in *Presbyterorum ordinis* 10, the Council Fathers, after inviting the presbyters of the dioceses richest in vocations to be "gladly prepared to offer themselves … for the exercise of their ministry in countries or mission or tasks that are hampered by shortage of clergy," decided that "the rules about incardination and excardination should be revised in such a way that, while this ancient institution remains intact, it will answer better to the pastoral needs of today"—that is, the objectives that are discussed above.

Both decrees (*CD* and *PO*) draw out a new concept of incardination, which demands complete availability, just like aggregation. Diocesan priests are described as cooperators in the episcopal order, given that "being incardinated in or appointed *incardinati vel addicti* to a particular church, they are wholly dedicated in its service to the care of a particular section of the Lord's flock" (*CD* 28). In a similar manner, the text of *Presbyterorum ordinis* 10 reads that "it can be useful to establish international seminaries, specific dioceses or personal prelatures and other institutions of this kind to presbyters may be incardinated or appointed [*addici vel incardinari*] for the common good of the Church."

Therefore, incardination is an act of incorporation into a community and a presbyterate. Its primary content is a relationship of service be-

tween a cleric and a hierarchical structure of the Church, whether territorial or personal. This no longer involves—as it had previously been understood—a simple subjection to the bishop. It involves incorporation, properly speaking, into the particular church or other hierarchical pastoral structure, *for* the purpose of service, and through its service, of also rendering service to the universal Church.

These conciliar texts also mention another juridical bond, aggregation or *addictio*, which began to emerge when it became clear that incardination, as *CIC*/1917 conceived it, was insufficient. It had already been established in the works for emigration, and subsequently, into the military vicariates,[1] and finally, into the mission in France.[2] Aggregation or *addictio* is a quasi-incardination, which establishes a relationship of service between a diocesan cleric and a pastoral structure whose content consists of full ministerial service. It is direct whenever a presbyter is added to a pastoral structure in order to exercise his ministry in the service of the faithful of said structure; while it is indirect whenever a presbyter is added to a pastoral structure without a specific group of people, this latter structure being aimed at providing presbyters to dioceses with a shortage of clergy. From this, it can be deduced that while presbyters may not be incardinated indistinctly into any of the structures mentioned in *Presbyterorum ordinis* 10, on the contrary, all presbyters may be added to any of these structures.[3]

Ecclesiae sanctae I, 3 §§ 2–4 already gave shape to this new figure of *addictio* into specific norms, all of which were moved in their entirety to c. 271 (see commentary).

3. The bond of incardination is stable, but relative at the same time, since all diocesan priests have the public subjective right that their ordinary grants them excardination or aggregation for reasons of ministerial service, except for a grave cause which is to be established by legislation.

With these features, it returns to the discipline of the primitive Church, by making incardination an institute that is markedly pastoral. It thereby gives concrete expression to ministerial service, although it distances itself from that discipline, at the same time, when it ceases to consider sacred orders as conferring a concrete and particular mission.

This specification in concrete terms is given, in the first place, by incardination through which the cleric is assigned to exercise his ministry within the framework of a particular church or other hierarchical struc-

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1. Cf. D. Le Tourneau, "La juridiction cumulative de l'Ordinariat aux Armées," in *Revue de Droit Canonique* 37 (1987), p. 190.
2. Cf. D. Le Tourneau, "La Mission de France: passé, présent et avenir de son statut juridique," in *Studia Canonica* 24 (1990), p. 370.
3. Cf. J.Mª. Ribas, *Incardinación y distribución del clero* (Pamplona 1971), pp. 121–122, 252–260.

ture; and then, by granting an office or attributing given functions through the *missio canonica.*

Incardination, or incorporation as a sacred minister to a particular church or comparable entity, is, therefore, a juridical relationship which joins the cleric to the bishop and which also unites him to a presbyterate and to other members of the faithful.[4]

4. *Communicationes*[5] reports that a review of the norms of incardination and excardination, under the auspices of *Presbyterorum ordinis*, is to be carried out in observance of the norms set forth in *ES* I, 3 and 4. By following these norms, the discipline of *CIC*/1917 cannot be maintained, by virtue of which, assignment of clerics could take place only within a diocese or religious. In fact, before Vatican Council II, some societies of clerics had received the faculty to incardinate clerics. For these reasons, the work of revision of the *Codex* extended to ascription of a cleric to a particular church or personal prelature, or to a religious or society which would have received such a faculty from the Apostolic See—for example, a missionary society.[6] Religious and societies and religions of diocesan right need this faculty (c. 1019 § 2). On this basis, an attempt has been made to make the institute of incardination and excardination more flexible, for the purpose of encouraging a more efficient geographic distribution of the clergy as well as developing specific pastoral or missionary activities.[7]

5. As has already been pointed out, the two most important innovations in regard to the *CIC*/1917 consist of:

a) Introduction of a personal prelature with the faculty to incardinate clerics. The flexibility introduced by Vatican Council II into the organization of the Church was kept in mind, when abandoning territoriality as an exclusive way of demarcating hierarchical structures and also when relying on personal judgment;[8] and

b) Facilitating the mobility of the clergy, whether in regard to the growing needs of those dioceses lacking clergy, or through a greater flexibility on behalf of the clergy who wish to be incardinated in another diocese, even for personal reasons.[9]

6. We would now like to make three observations of a terminological nature:

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4. Cf. D. LE TOURNEAU, "Incardination," in *Dictionnaire historique de la papauté* (Paris 1994).
5. Cf. *Comm.* 3 (1971), pp. 189–190.
6. Cf. *Comm.* 9 (1977), p. 243.
7. Cf. *Comm.* 6 (1974), p. 45; 24 (1992), p. 276.
8. Cf. D. LE TOURNEAU, "Prélatures," in *Dictionnaire historique de la papauté* (Paris 1994).
9. Cf. E. COLAGIOVANNI, "Incardinazione ed escardinazione nel nuovo Codice di Diritto Canonico," in *Monitor Ecclesiasticus* 160 (1984), p. 51.

a) The redactors of this canon, discussed in the study group to examine the observations in the *schema* "*De Populo Dei,*" transmitted by the consultative bodies, included a second paragraph, which read as follows: "apostolica Nomine Ecclesiae particularis intellegitur Dioecesis, cui aequiparatantur Praelatura et Abbatia cum populo sibi proprio ad normam can. 217 § 1, Vicariatus et Praefectura apostolica necnon Administratio stabiliter erecta"; and a third paragraph: "Ecclesiae particulari in canonibus qui sequuntur, aequiparatur quoque Praelatura personalis de qua in can. 217 § 2." Both paragraphs were later suppressed, since they responded to a phrase—that of prelature with *cum proprio populo* or *sine proprio populo*—which had already been surpassed.[10]

b) According to the language of c. 265, incardination may take place on a double level, distinguished by the conjunction "*aut ... aut,*" each of these two levels being divided once again, with this second division understood by means of the conjunction "*vel ... vel.*" The first level is that of hierarchical structures, that is, the particular churches (cc. 368, 372) and the personal prelatures (cc. 294–297). The second level consists of entities that are associative in nature: the institutes of consecrated life and the societies of apostolic life that have received the faculty to incardinate clerics from the Apostolic See. It seems important to us to emphasize this, since successive variations in the drafting of the canon reflect the clear intention of the legislator. In the year 1966, the text used solely and indiscriminately the conjunction "*aut,*" with a comma before the clause "*societati hac facultate... donatae*"[11] which has since disappeared in the text, subject to study by the consultors in 1973.[12] During the working session in April of that same year, the fourth "*aut*" was replaced by a "*vel,*" in order to emphasize that there may exist societies different from both the institutes of perfection and prelatures.[13] The final text was at last reached, thereby establishing the double level to which we have referred, which is highly illuminating.

The status of the members of such institutes of consecrated life and societies of apostolic life is clarified in the following canons in this chapter II. Canon 736 § 1 should also be kept in mind.

c) All that remains is to refer briefly to the title of this chapter: "De clericorum adscriptione seu incardinatione." There was a proposal to use only the word "incardination" for all cases, based on the fact that if *incardinatio* were to be adopted in order to define the relationship established between an ordained priest and his diocese, and *adscriptio* to define the

10. Cf. *Comm.* 14 (1982), p. 63; 16 (1984), pp. 159–160, 187.
11. Cf. *Comm.* 16 (1984), p. 159
12. Cf. *Comm.* 24 (1992), p. 290.
13. Cf. *Comm.* 24 (1992), pp. 300 and 321.

relationship between a cleric and the society or religious institute to which he belongs, then misunderstandings could arise. In effect, laypersons are also "*adscripti*" to the society or institute. The answer was given that when dealing with religious, recourse should never be made to the word "incardination."[14] The title, therefore, remained unchanged.

14. Cf. *Comm.* 14 (1982), pp. 62–63.

266 **§ 1. Per receptum diaconatum aliquis fit clericus et incardinatur Ecclesiae particulari vel praelaturaepersonali pro cuius servitio promotus est.**

§ 2. Sodalis in instituto religioso a votis perpetuis professus aut societati clericali vitae apostolicae definitive incorporatus, per receptum diaconatum incardinatur tamquam clericus eidem instituto aut societati, nisi ad societates quod attinet aliter ferant constitutiones.

§ 3. Sodalis instituti saecularis per receptum diaconatum incardinatur Ecclesiae particulari pro cuius servitio promotus est, nisi vi concessionis Sedis Apostolicae ipsi instituto incardinetur.

§ 1. By the reception of the diaconate a person becomes a cleric, and is incardinated in the particular Church or personal Prelature for whose service he is ordained.

§ 2. A member who is perpetually professed in a religious institute, or who is definitively incorporated into a clerical society of apostolic life, is by the reception of the diaconate incardinated as a cleric in that institute or society unless, in the case of a society, the constitutions determine otherwise.

§ 3. A member of a secular institute is by the reception of the diaconate incardinated into the particular Church for whose service he was ordained, unless by virtue of a concession of the Apostolic See he is incardinated into the institute itself.

SOURCES: § 1: SCCouncil Resol., 10 mar. 1923 (*AAS* 16 [1924] 51–55); SCCouncil Resol., 14 feb et 11 iul. 1925 (*AAS* 18 [1926] 48–55); *AP* IX
§ 2: cc. 115, 585, 678; SCCouncil Resol., 15 iul. 1933 (*AAS* 26 [1934] 234–236); CodCom Resp., 24 iul. 1947
§ 3: SCR Resp., 1952

CROSS REFERENCES: cc. 265, 1015, 1016, 1019

COMMENTARY

Dominique Le Tourneau

1. A double type of incardination must first be discussed: *original* incardination, which is acquired for the first time when passing from the condition of a layperson to that of a cleric through reception of the diaconate; and *derived* incardination, which is acquired later, through another lawful incorporation, whether formally by means of acts of excardination and incardination regulated by c. 267, or *ipso iure*, when the requirements established by law (cc. 268 and 693) are fulfilled.

2. The individual who wishes to be a secular cleric, in accordance with c. 1016, may approach the bishop in the diocese where he is domiciled (c. 102), or the bishop in the diocese where he wishes to serve, without being previously obligated to acquire a domicile there. In this way, the legislation prior to *CIC*/1917 (c. 956) is simplified, and the provisions in the *schema "De Populo Dei"* (in its c. 198) are disregarded because incardination ought to have occurred in the diocese of domicile, the diocese of origin or that diocese in whose service the candidate wished to devote himself, with the consent of the bishop of the diocese of his domicile.

On the other hand, the candidate ought to have been previously admitted by means of a liturgical rite, as provided under c. 1034 § 1, and should have received the ministries of lector and acolyte (c. 1035 § 1)—this latter ministry at least six months beforehand. Those periods of time which should intervene between the conferral of a ministry and ordination are called intervals (c. 1035 § 2).

3. The text of §§ 2 and 3 underwent important modifications until it reached the present version, so as to take into account the following situations: *a)* it is not accurate that members of secular institutes are automatically incardinated when they acquire a permanent bond in them; *b)* there exist societies and institutes that have a double incardination within a particular church, as well as the institute; and finally, *c)* there exist societies and institutes whose constitutions establish that through the diaconate, their members are incardinated in a particular church, not in the association.[1]

Five hypothetical situations can be presented, therefore (see commentary on c. 265).

— At the level of hierarchical structures (c. 266 § 1):

i) incardination of a secular cleric through the diaconate for service in a particular church; and

1. *Comm.* 14 (1982), pp. 64–65

ii) incardination of a secular cleric through the diaconate for service in a personal prelature (c. 295 § 1).

— At the level of entities that are associative in nature:

iii) incardination of someone who has taken perpetual vows in a religious institute through the diaconate; is incardinated *as cleric* in said institute (c. 266 § 2);

iv) incardination of a member of a society of apostolic life, who is definitively incorporated into it, through the diaconate; is incardinated *as cleric* in the society, or if the statutes thus establish, in a particular church (c. 266 § 2). For a society of clerical apostolic life, the cleric is incardinated into the same society, unless the constitutions determine otherwise (c. 736 § 1); and

v) incardination of a member of a secular institute, through the diaconate. He is incardinated *as cleric* into the particular church for whose service he has been admitted, unless he is incardinated in the institute itself through a special concession granted by the Apostolic See (c. 266 § 3), in which case he depends on the bishop, just as religious do (c. 715 § 2).

It should be noted that because of profession, the religious is attached to the religious institute as a member and not as a cleric. It is upon reception of the order of the diaconate, as we have stressed, that *adscriptio* is acquired as a cleric.[2]

4. The present c. 266 sets the conditions for the original incardination.

By suppressing tonsure and the minor orders (*MQ*, I–II), the condition of cleric is attained, not because of the tonsure as before (c. 111 § 2 *CIC*/1917), but through the diaconate, qualified as the *root* of incardination.[3] For this reason § 1 begins with the expression "*per receptum diaconatum*," which reappears in §§ 2 and 3.[4]

5. Incardination is not reduced to a mere juridic bond. It also assumes "a series of attitudes and spiritual and pastoral options," which help to give the vocation of priest its own physiognomy (*PDV* 31).

In fact, the ministerial priesthood, in hierarchical structures, reveals itself in the immediate service to the faithful as such, within the framework of the sole mission of the Church, which demands cooperation from the ministerial priesthood and the common priesthood of all the faithful (cf. *LG* 10). In those entities that are associative in nature, the priestly order—and incardination involved in its case—does not produce such interrelationship within the heart of the entity, but rather allows them to

2. *Comm.* 3 (1971), p. 190.
3. Cf. *Comm.* 3 (1971), p. 190; 9 (1977), p. 243; 16 (1984), pp. 161–162.
4. Cf. *Comm.* 24 (1992), pp. 276, 290–291.

better ensure the unity of governance of the entity and of its apostolic activities, when its charism and establishment thus require it.[5]

6. The bond of ordination is permanent in character: it may only be broken according to law. A change in incardination can only occur when the cleric has found another bishop willing to accept him, and his own bishop is willing to grant him excardination (see commentary on the following canons).

5. Cf. J.I. BAÑARES, "Algunas consideraciones a propósito de la incardinación," in *Scripta Theologica* 23 (1991/1), pp. 253–254.

267 **§ 1. Ut clericus iam incardinatus alii Ecclesiae particulari valide incardinetur, ab Episcopo dioecesano obtinere debet litteras ab eodem subscriptas excardinationis; et pariter ab Episcopo dioecesano Ecclesiae particularis cui se incardinari desiderat, litteras ab eodem subscriptas incardinationis.**

§ 2. Excardinatio ita concessa effectum non sortitur nisi incardinatione obtenta in alia Ecclesia particulari.

§ 1. To be validly incardinated in another particular Church, a cleric who is already incardinated must obtain a letter of excardination signed by the diocesan Bishop, and in the same way a letter of incardination signed by the diocesan Bishop of the particular Church in which he wishes to be incardinated.

§ 2. Excardination granted in this way does not take effect until incardination is obtained in the other particular Church.

SOURCES: § 1: c. 112; *SCCong* Decr. *Magni semper*, 30 dec. 1918 (*AAS* 11 [1919] 39–43); SCPF Decr. *Ad tuendam*, 24 oct. 1948 (*AAS* 41 [1948] 34–35); PIUS PP. XII, Ap. Const. *Exsul familia*, 1 aug. 1952 (*AAS* 44 [1952] 649–704)
§ 2: c. 116, *SCCong* Decr. *Magni semper*, 30 dec. 1918 (*AAS* 11 [1919] 39–43); SCPF Decr. *Ad tuendam*, 24 oct. 1948 (*AAS* 41 [1948] 34–35); PIUS PP. XII, Ap. Const. *Exsul familia*, 1 aug. 1952 (*AAS* 44 [1952] 649–704)

CROSS REFERENCES: c. 269, 272

COMMENTARY

Dominique Le Tourneau

1. If c. 266 contemplates *original* incardination (see commentary), the canon which is now the subject of our commentary deals with *derived* incardination, that which may be acquired subsequent to the original incardination.

2. A change in incardination occurs through simultaneously obtaining (*ad validitatem*) excardination from one's own bishop and incardination in the other particular church, granted by the bishop of that particular church. An effort may be made to facilitate this whenever the *bonum ecclesiae* thus demands it. Nor is it required that letters of excardination and incardination be *perpetuae et absolutae* in order to facilitate assignment

to a particular church if the good of the Church demands it.[1] Therefore, the norms set forth in *CIC*/1917 are followed by making a change in *adscriptio* much easier.[2]

For validity, therefore, two distinct and complementary acts are required: *a)* a letter of excardination from the diocesan bishop *a quo*, which authorizes a cleric to definitively leave his diocese; and *b)* a letter of incardination from the diocesan bishop *ad quem*, by means of which he promises to receive the aforementioned cleric in his diocese. The first letter takes effect only when the second comes into existence and also takes effect. In this way, it can be avoided that the cleric is—for however short a time—without any incorporation. Also, the diocesan bishop proceeds to incardinate only if the concession of excardination is made in a legitimate document (c. 269, 2°) and he has received a written declaration from the cleric (c. 269, 3°). Should either of these requirements be missing, the new incardination and any subsequent incardinations would be invalid.

3. Paragraph 2—drawn from c. 116 *CIC*/1917[3]—reinforces this affirmation when it establishes that incardination granted according to § 1 takes effect only if the cleric has managed to have the other diocesan bishop incardinate him in another particular church.

The *CIC*/1917 mentioned the "Ordinary," but c. 113 excluded the vicar general or the chapter vicar from granting letters of excardination, unless the episcopal see had been vacant for one year. When the figure of the chapter vicar disappeared, the *CIC* granted the diocesan administrator the power to grant letters of excardination and incardination after the see was vacant for one year (c. 272). In addition, c. 113 *CIC*/1917 established the possibility that a bishop could grant a special mandate to the vicar general. This possibility ex officio was suppressed, while at the same time, the term local ordinary was replaced with that of the diocesan bishop.[4] As a result of this, it is evident that the aforementioned letters are to be signed solely and exclusively by the diocesan bishop, both *a quo* as well as *ad quem*.

When speaking about letters, it must be pointed out that consent given orally is not sufficient.

Derived incardination is given each time the supreme authority of the Church proceeds to erect a new diocese,[5] with the clerics who are domiciled within the territory of the new diocese usually incardinated in it.

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1. Cf. *Comm.* 3 (1971), p. 190; 16 (1984), p. 162.
2. Cf. *Comm.* 9 (1977), p. 243.
3. Cf. *Comm.* 16 (1984), p. 165.
4. Cf. *Comm.* 14 (1982), p. 167.
5. Cf. J. SCHIDT, "Status of Incardinatión at the Establishment of a New Diocese," in *The Jurist* 21 (1961), pp. 296–310.

268 **§ 1. Clericus qui a propria Ecclesia particulari in aliam legitime transmigraverit, huic Ecclesiae particulari, transacto quinquennio, ipso iure incardinatur, si talem voluntatem in scriptis manifestaverit tum Episcopo dioecesano Ecclesiae hospitis tum Episcopo dioecesano proprio, neque horum alteruter ipsi contrariam scripto mentem intra quattuor menses a receptis litteris significaverit.**

§ 2. Per admissionem perpetuam aut definitivam in institutum vitae consecratae aut in societatem vitae apostolicae, clericus qui, ad normam can. 266 § 2, eidem instituto aut societati incardinatur, a propria Ecclesia particulari excardinatur.

§ 1. A cleric who has lawfully moved from his own particular Church to another is, by virtue of the law itself, incardinated in that latter Church after five years, if he has declared this intention in writing to both the diocesan Bishop of the host diocese and his own diocesan Bishop, and neither of the two Bishops has indicated opposition in writing within four months of receiving the cleric's written request.

§ 2. By perpetual or definitive admission into an institute of consecrated life or a society of apostolic life, a cleric who in accordance with can. 266 § 2 is incardinated in that institute or society, is excardinated from his own particular Church.

SOURCES: § 1: *ES* I, 3 § 5; *PA* 31
§ 2: cc. 115, 585; SCCouncil Resol., 15 iul. 1933 (*AAS* 26 [1934] 234–236)

CROSS REFERENCES: c. 270, 271, 693

COMMENTARY

Dominique Le Tourneau

The present canon describes the way in which incardination *ipso iure* is to take place. Three cases are considered.

1. The first case is that of incardination *ipso iure* (§ 1) or, in other words, a secular cleric who has legitimately moved from his own particular church to another particular church. It was introduced by Paul VI, in

Ecclesiae sanctae, I, 3 § 5,[1] the provisions of which are literally reproduced in c. 268 § 1,[2] and which have been interpreted by Signatura.[3]

Incardination automatically occurs (*ipso iure*) provided that:

a) the cleric in question has stated in writing his desire or intention to be incardinated in the new particular church. This statement should be given formally as well as implicitly, in the form of a petition or even an expression of mere desire, clearly and without ambiguities. The proposal to make the change in incardination contingent upon the public good instead of the wish of the cleric was rejected: the personality of the cleric and his legitimate freedom of choice in a matter of such great significance cannot be discounted;[4]

b) five years of lawful residence in the particular church *ad quem* must have elapsed. This residence must be "legitimate"—in other words, authorized by both diocesan bishops (*a quo* and *ad quem*) and uninterrupted *de iure*, without either of the two bishops having withdrawn their consent, and *de facto*, with the cleric having remained uninterruptedly in the particular church, with the exception of legitimate leaves of absence and need;

c) it is irrelevant that the letters mentioned in § 1 are written during the course of the five-year period or at the completion thereof: automatic incardination cannot take place unless the five-year period has been uninterrupted;

d) the letters of the cleric should be addressed both to the bishop of his church of origin as well as the diocesan bishop of the particular church which is to accept him, independent of whether these letters are written on the same day or at different times;

e) neither of the two diocesan bishops should have expressed his opposition within the period of four months after receipt of said letter. This must be a matter involving true will—not a mere desire, advice, etc.—conveyed in writing to the party concerned, directly by the diocesan bishop or by someone else on his behalf. The consent of the two diocesan bishops is demanded, but the actual exercise of the ministry on the part of the cleric within the diocese *ad quem* is not, since the cleric may devote himself to social, educational, or welfare works, or he may be ill, disabled, or elderly.[5]

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1. Cf. *Comm.* 3 (1971), pp. 190–191.
2. *Comm.* 16 (1984), pp. 162–163; cf. E. COLAGIOVANNI, "De Incardinatione ex jure, vi MP 'Ecclesiae Sanctae'," in *Monitor Ecclesiasticus* 104 (1979/I), pp. 22ff.
3. Sentence of June 20, 1977, in *Comm.* 10 (1978), pp. 152–158.
4. Cf. *Comm.* 14 (1982), p. 66.
5. Signatura, sentence *Miamien. Incardinationis*, June 27, 1978, in *Comm.* 10 (1978), pp. 152–158.

2. The second case (§ 2) is that of a secular cleric who has been admitted into an institute of consecrated life or into a society of apostolic life that has the faculty to incardinate its members. In the session on January 14, 1980, the secretary of the study group of the current c. 268 explained that it could not be said in an absolute way that perpetual admission into an institute of consecrated life entailed excardination of the cleric from his own particular church. This would occur if he were to be automatically incardinated in the institute of consecrated life, something which depends on the nature of the institute itself. There are secular institutes which admit *perpetue* the cleric who preserves his incardination in the diocese.

It should be added that this is not an automatic procedure: admission equaling excardination. In effect, the cleric may be admitted into a religious institute and may remain incardinated in the diocese as long as he has not taken perpetual vows with which he would permanently join the institute and remain excardinated from the diocese. In the same manner, he who attains excardination from an institute is not automatically incardinated again in his own diocese; he first needs to find a diocesan bishop who will accept him.[6]

All of this notwithstanding, the canon establishes that excardination *ipso iure* from the diocese of origin, with the subsequent incardination in the institute or society occurs with perpetual or permanent admission—"*aut definitiva*" is an addition made to the original text[7]—into said institute or society.

3. The third case occurs when a cleric who is incardinated in a religious institute or society of apostolic life is granted an indult to leave the institute or society and is accepted *ad experimentum* in a diocese by the corresponding bishop. The indult would be granted only when the interested party found a diocesan bishop willing to accept him. After a five-year period has elapsed without acceptance by a diocesan bishop, the cleric becomes incardinated *de iure* in the diocese into which he has been received, unless the bishop has failed to accept him (cc. 693, 743).[8]

A cleric who has been legitimately expelled from an institute or society is prohibited from the exercise of orders as long as he has not been received by a diocesan bishop *ad experimentum*, unless he has authorization to exercise his ministry (c. 701).

These provisions also apply to members of a secular institute (c. 727 § 2).

6. Cf. *Comm.* 14 (1982), pp. 67–68.
7. Cf. *Comm.* 14 (1982), pp. 167–168.
8. Cf. G. DI MATTIA, "Gli istituti di vita consacrata e la società di vita apostolica: questioni canoniche," in *Vita Consacrata* 28 (1992), pp. 860–863.

As a result of the profound reform experienced by the system of benefices (c. 1272)—which, according to *Presbyterorum ordinis* 20, places the primary emphasis on the office, with the benefice being regarded as secondary—the cause of c. 114 *CIC*/1917 has been suppressed,[9] as it pertains to excardination-incardination through the acquisition of a benefice of residence in another diocese.

9. Cf. *Comm.* 3 (1971), p. 191; 16 (1984), p. 162.

269 Ad incardinationem clerici Episcopus dioecesanus ne deveniat nisi:

1° necessitas aut utilitas suae Ecclesiae particularis id exigat, et salvis praescriptis honestam sustentationem clericorum respicientibus;

2° ex legitimo documento sibi constiterit de concessa excardinatione, et habuerit praeterea ab Episcopo dioecesano excardinanti, sub secreto si opus sit, de clerici vita, moribus ac studiis opportuna testimonia;

3° clericus eidem Episcopo dioecesano scripto declaraverit se novae Ecclesiae particularis servitio velle addici ad normam iuris.

A diocesan Bishop is not to incardinate a cleric unless:

1° the need or the advantage of his particular Church requires it, and the provisions of law concerning the worthy support of the cleric are observed;

2° he knows by a lawful document that excardination has been granted, and has also obtained from the excardinating Bishop, under secrecy if need be, appropriate testimonials concerning the cleric's life, behaviour and studies;

3° the cleric declares in writing to the same Bishop that he wishes to enter the service of the new particular Church in accordance with the norms of law.

SOURCES: c. 117

CROSS REFERENCES: c. 267, 270

COMMENTARY

Dominique Le Tourneau

This canon and the following one list the conditions for excardination and derived incardination.

Insofar as incardination is concerned, the present c. 269 sets forth in detail three conditions which have been drawn from c. 117 *CIC*/1917, with some changes:[1]

1. Cf. *Comm.* 16 (1984), p. 166.

a) a true need or advantage for a particular church, in regard to the right of the cleric to decent financial support (cc. 281 and 384). One proposal aimed at establishing that the cleric, once he left his diocese of origin without hope of returning there, was obligated to seek incardination after a five-year period, and was not accepted on the basis that only the diocesan bishop can incardinate, according to the needs of his diocese. It was also argued that should the proposal be accepted, it would justify recourse against the decision of the bishop, "which would be dangerous." In addition, it was held that if no one had a right to ordination, neither did he have a right to incardination.[2]

b) a legitimate document signed by the diocesan bishop *a quo* (c. 270), by means of which excardination is granted for a just reason (c. 270). This would involve permission for permanent and unconditional excardination, not a mere promise. It is to be accompanied by his testimony—possibly confidential—about the life and habits of the cleric during the period in which he worked in the diocese. Naturally, the fact of having committed an irregularity and the actual correction of the cleric are to be mentioned in this case. The bishop would also attest to the fact that the cleric had completed his required studies.

c) a written statement from the cleric, in which he expresses his current wish to devote himself to the service of his new particular church, according to the norms of law. It is not required—as in c. 117, 3° *CIC*/1917—that he be obligated under oath.

2. Cf. *Comm.* 14 (1982), p. 70.

270 **Excardinatio licite concedi potest iustis tantum de causis, quales sunt Ecclesiae utilitas aut bonum ipsius clerici; denegari autem nonpotest nisi exstantibus gravibus causis; licet tamen clerico, qui se gravatum censuerit et Episcopum receptorem invenerit, contra decisionem recurrere.**

Excardination can be lawfully granted only for a just reason, such as the advantage of the Church or the good of the cleric. It may not, however, be refused unless grave reasons exist; it is lawful for a cleric who considers himself to be unfairly treated and who has found a Bishop to receive him, to have recourse against the decision.

SOURCES: *PO* 10

CROSS REFERENCES: cc. 265, 268, 269

COMMENTARY

Dominique Le Tourneau

This canon responds to the third reason—to allow sacred ministers to change dioceses for grave personal reasons—which demanded a revision of the institute of incardination at the beginning of Vatican Council II (see commentary on c. 265).

The conditions for excardination (see c. 269 and commentary for derived incardination) are condensed in this canon in the terms "just reasons, such as the need of the Church or the good of the cleric himself." An example of the former could be long-term ministerial service—five years at least—which produces incardination *ipso iure*, according to the language in c. 268 § 1. And insofar as the good of the cleric is concerned, this might consist of his spiritual or physical health, or for other weighty reasons, such as family responsibility, etc.

Here the liceity of excardination is discussed, the conditions for its validity having been previously set forth in c. 267.

The canon expressly provides that, if a just reason is given, the diocesan bishop cannot deny excardination, unless a grave cause intervenes against it—and not "*gravioribus*," as the first draft of this text read.[1] This norm has now been written in a more positive way than the first draft,

1. Cf. *Comm.* 14 (1982), pp. 69–70.

which said: "...concedi nequit sine iustis causis... Sed nec denegari potest nisi..."[2]

It should be noted that in order to grant excardination, a "just reason" is required, while a "grave reason" is needed to deny it.

In the event that excardination were denied, if this becomes burdensome and if another bishop is found who is willing to receive him, the cleric may have recourse against said decision, following the procedure set forth in book VII (cf. cc. 1732–1739). In this way, a response was given[3] to the guiding principles in the works of *Coetus studiorum de Sacra Hierarchia*, and the cleric was accorded the right to make a change in incardination, something that not been done[4] in the Council or in *Ecclesiae sanctae*.

If it were to happen that the bishop did not answer a lawful petition for excardination submitted by a cleric, a negative response will be presumed after a period of three months, and the cleric may have recourse (c. 57 § 2). At first,[5] the text of the canon thus read *in fine*: "licet clerico qui Episcopum receptorem invenerit contra decisionem denegantem recurrere via sive administrativa sive iudiciaria." Subsequently, only administrative recourse was mentioned.[6] Finally, the text does not descend to this point.

2. Cf. *Comm.* 24 (1992), p. 276.
3. Cf. *Comm.* 3 (1971), p. 191.
4. Cf. J. HERVADA, "La incardinación en la perspectiva conciliar," in *Vetera et Nova. Cuestiones de Derecho Canónico y afines (1958–1991)* (Pamplona 1992), pp. 391–451, especially p. 427.
5. Cf. *Comm.* 16 (1984), p. 165.
6. Cf. *Comm.* 24 (1992), pp. 301, 322.

271 **§ 1. Extra casum verae necessitatis Ecclesiae particularis propriae, Episcopus dioecesanus ne deneget licentiam transmigrandi clericis, quos paratos scit atque aptos aestimet qui regionespetant gravi cleri inopia laborantes, ibidem sacrum ministerium peracturi; prospiciat vero ut per conventionem scriptam cum Episcopo dioecesano loci, quem petunt, iura et officia eorundem clericorum stabiliantur.**

§ 2. Episcopus dioecesanus licentiam ad aliam Ecclesiam particularem transmigrandi concedere potest suis clericis ad tempus praefinitum, etiam pluries renovandum, ita tamen ut iidem clerici propriae Ecclesiae particulari incardinati maneant, atque in eandem redeuntes omnibus gaudeant iuribus, quae haberent si in ea sacro ministerio addicti fuissent.

§ 3. Clericus qui legitime in aliam Ecclesiam particularem transierit propriae Ecclesiae manens incardinatus, a proprio Episcopo dioecesano iusta de causa revocari potest, dummodo serventur conventiones cum altero Episcopo initae atque naturalis aequitas; pariter, iisdem condicionibus servatis, Episcopus dioecesanus alterius Ecclesiae particularis iusta de causa poterit eidem clerico licentiam ulterioris commorationis in suo territorio denegare.

§ 1. Except for a grave need of his own particular Church, a Bishop is not to refuse clerics seeking permission to move whom he knows to be prepared and considers suitable to exercise the ministry in regions which suffer from a grave shortage of clergy. He is to ensure, however, that the rights and duties of these clerics are determined by written agreement with the diocesan Bishop of the place to which they wish to move.

§ 2. A Bishop can give permission to his clerics to move to another particular Church for a specified time. Such permission can be renewed several times, but in such a way that the clerics remain incardinated in their own particular Church, and on returning there enjoy all the rights which they would have had if they had ministered there.

§ 3. A cleric who lawfully moves to another particular Church while remaining incardinated in his own, may for a just reason be recalled by his own Bishop, provided the agreements entered into with the other Bishop are honored and natural equity is observed. Under the same conditions, the Bishop of the other particular Church can for a just reason refuse the cleric permission to reside further in his territory.

SOURCES: § 1: *PO* 10; *ES* I, 3 § 2; *PA* 26, 27
§ 2: *ES* I, 3 § 4; *PA* 28, 30
§ 3: c. 144

CROSS REFERENCES: cc. 257, 265, 268

COMMENTARY

Dominique Le Tourneau

1. The norms of this canon are the direct consequence of *Christus Dominus* 6, and even more directly of *Presbyterorum ordinis* 10, pertaining to the assistance which particular churches should mutually render each other (see commentary on c. 265).

The consequences that can be deduced from these texts are directed towards a double purpose: to review the norms on incardination and excardination so that they respond better to current pastoral needs, and to seek a more flexible distribution of presbyters, as well as pastoral initiatives on behalf of specific social groups in various countries or throughout the world.

Under these guidelines, and with their specific application in *Ecclesiae sanctae*, I, 3-5, the profound missionary nature of individual persons and particular churches is stressed.[1] In 1967, Paul VI created a commission aimed at establishing the principles of a more just distribution of the clergy, taking into account the needs of different churches. This issue was studied by the CSpC, which consulted the bishops' conferences, and convened an international congress in Malta on "The World is my Parish."[2] Ten years later it published "Guidelines for Cooperation among Local Churches, especially for a Better Distribution of the Clergy."[3]

2. After having established the provisions in c. 268 § 1, this canon makes the following determinations:

a) the diocesan bishop cannot deny permission to transfer clerics who are suitable and willing to go to regions suffering from a shortage of clergy, to exercise their ministry there. Only a true need of their particular church—the perception of which is left to his judgment—can induce him to deny it (c. 270 requires grave reasons for denying excardination). He will make provisions to prepare the cleric adequately (c. 257 § 2);

1. Cf. *Comm.* 16 (1984), pp. 163-164.
2. *The World is my Parish* (Malta 1971).
3. *SCCong*, Instruction *Postquam Apostoli*, March 25, 1980, in *AAS* 72 (1980), pp. 343-364.

b) by means of a written agreement between the bishop *a quo* and the bishop *ad quem*, the rights and duties of the cleric shall be defined. This agreement will have to be accepted and signed by the party concerned. It will conform to the guidelines contained in SCCong, thus specifying: the length of service; the concrete offices or specific ministry to which he must devote himself; the place and financial conditions of such service, taking into account the standard of living in the region; and the health care system for illness, disability, and old age;

c) the bishop can grant permission to move for a given period of time. This permission can be renewed several times, and in such a manner that the cleric remains incardinated in his diocese of origin, in which, for purposes of his subsequent return, he will retain all the rights he would have otherwise acquired had he exercised his ministry there;

d) the diocesan bishop *a quo* for a just cause may call the cleric who has lawfully been transferred to another particular church back again, but he should honor the terms of the agreement stipulated with the diocesan bishop *ad quem*, with the natural equity also remaining intact;[4]

e) similarly, the diocesan bishop *ad quem* may, for a just cause, refuse the cleric permission to remain any longer in his diocese.

3. Based on a literal reading of the norm, it may be concluded that the assumption of bilateral relations between the two diocesan bishops is limited. However, the editors of the Code implied that its application is indeed wider. In effect, some Fathers proposed that it be specified that this canon also refer to clerics who hold regional or national positions, or who work at an institution of catholic education.[5] Not without reason was the response given that they are already included in the formulation of the canon. We find ourselves here—with c. 271—in the face of practical modes of *addictio* or aggregation of the clergy (see commentary on c. 265).

Therefore, it should not surprise us that the norms contained in c. 271 have a wider application than that of its text. It may be applied, for example, to clergy placed by one diocese at the disposal of the offices of the bishops' conference, or even of the Dicasteries of the Roman Curia. In the case of the bishops' conference, it would be the same Conference, handled by the general secretary, who would act as spokesperson of the diocesan bishop in regard to all matters involving the agreement set forth under canon 271 § 1. Insofar as the Roman Curia is concerned, the spokesperson would be the President of the Dicastery involved.

Moreover, because this also involves aggregation (see commentary on c. 265, no. 2), clerics placed by diocesan bishops at the disposal of the army or military ordinariate are also to be understood as included in this

4. Cf. *Comm.* 16 (1984), p. 114.
5. Cf. *Comm.* 14 (1982), p. 168.

category.[6] While it is indeed true—as is well known—that military ordinariates have the power to incardinate their own priests (see commentary on cc. 266 and 569), they do not always resort to this, and they continue to receive the assistance of the secular clergy, or even of the religious (cf. *SMC*, VI § 1). Under this assumption, the agreement is to be signed between the diocesan bishop *a quo* and the prelate of the military ordinariate. The same must be said in regard to specialized clergy sent to dioceses with a shortage of clerics[7] by bishops from France through the prelature of Pontigny or the prelature of the mission of France.

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6. Cf. D. LE TOURNEAU, "La nouvelle organisation de l'Ordinariat aux Armées," in *Studia Canonica* 21 (1987). pp. 37-66.

7. Cf. D. LE TOURNEAU, "Un collège des consulteurs pas comme les autres: le comité épiscopal de la Mission de France," in *La synodalité. La participation au gouvernement dans l'Église. Actes du VII^e congrès international de Droit canonique, Paris, Unesco, 21-28 septembre 1990, L'Année Canonique*, hors série, vol. II, pp. 795–804.

272 **Excardinationem et incardinationem, itemque licentiam ad aliam Ecclesiam particularem transmigrandi concedere nequit Administrator dioecesanus, nisi post annum a vacatione sedis episcopalis, et cum consensu collegii consultorum.**

The diocesan Administrator cannot grant excardination or incardination, nor permission to move to another particular Church, unless the episcopal see has been vacant for a year, and he has the consent of the college of consultors.

SOURCES: c. 113

CROSS REFERENCES: cc. 267, 427

COMMENTARY

Dominique Le Tourneau

On one hand, the norms set forth in c. 113 *CIC*/1917 had to be adapted and extended to the permission to move to another particular church, thus preserving incardination in one's own particular church.[1] On the other hand, it is solely the competence of the diocesan bishop to authorize incardination, excardination or transfer to another particular church (see commentary on cc. 265-271). In order to stress this exclusive competence, the term "diocesan bishop" is used instead of "ordinary" (see commentary on c. 267), which, according to c. 134 § 1, also includes the vicars general and the episcopal vicar.[2]

For this reason, it is to be understood that this canon imposes a restriction on the power enjoyed by the diocesan administrator. Canon 427 § 1 accords him the same power as the diocesan bishop, except for what is excluded by the nature of the office or by law itself. The law specifically precludes here the diocesan administrator from authorizing a transfer to another particular church, much less excardination or incardination, except in the following cases:

a) if the episcopal see has been vacant for one year, this time being calculated from the same day of the death of the bishop and not from the selection of the diocesan administrator (cc. 423-425);

1. Cf. *Comm.* 3 (1971), p. 191.
2. Cf. *Comm.* 16 (1984), p. 167.

b) if the consent of the college of consultors has been obtained (c. 1018 § 1, 2°), this consent being needed for this act to be valid (c. 127 § 1).

These conditions should occur simultaneously. Consent of the college of consultors would not be sufficient, if it were to take place during the first year of the vacancy.

CAPUT III
De clericorum obligationibus et iuribus

CHAPTER III
The Obligations and Rights of Clerics

273 **Clerici speciali obligatione tenentur Summo Pontifici et suo quisque Ordinario reverentiam et oboedientiam exhibendi.**

Clerics have a special obligation to show reverence and obedience to the Supreme Pontiff and to their own Ordinary.

SOURCES: c. 127; *PO* 7; PAULUS PP. VI, Alloc., 1 mar. 1965 (*AAS* 57 [1965] 326)

CROSS REFERENCES: cc. 274 § 2, 276, 495–502, 1371, 2°

COMMENTARY

Jorge de Otaduy

This canon, which begins the chapter of the *CIC* on the statute of clerics, synthesizes, using that language inherent to law, which, on the order of social relations, emerges out of a matter of wide theological significance, the relations between the presbyter and his own ordinary, and in particular, between the latter and the Roman Pontiff.[1]

1. Recently, the *Directory on the ministry and life of priests*, on January 31, 1994 of the CC, has completed a theological reflection on the priesthood, discussing particularly the specific subject of communion, a "much needed demand particularly felt today—stated in one of the first introductory paragraphs—given its impact on the life of the priest." A *Clarification* of the PCILT (October 22, 1994) specifies that the norms of the directories which determine the methods of executing universal laws belong in the category of general executory decrees (cf. c. 32 CIC). The text of the *Clarification* is found in *Sacrum Ministerium*, 1995, pp. 263–273.

As John Paul II has recalled, "the ecclesiology of communion becomes decisive for understanding the identity of the priest, his essential dignity, and his vocation and mission among the people of God and in the world" (*PDV* 12). "Communion as characteristic of the priesthood," adds the *Directory for the Ministry and Life of Priests*, "is based on the unity of the Head, Shepherd and Spouse of the Church, who is Christ. In such ministerial communion some precise ties are shaped with the Pope, the College of Bishops and each one's diocesan Bishop."[2] Specifically, "each presbyter is to have a deep, humble, and filial bond of charity with the person of the Holy Father, and should adhere to his Petrine ministry—that of magisterium, of sanctification, and of governance—with exemplary docility."[3] The obligation to adhere to the magisterium in matters of faith and morals can be read in another place in the same *Directory*: It "is intrinsically united to all the functions which the priest must perform in the Church. Dissent in this area is to be considered grave, in that it produces scandal and confusion among the faithful."[4]

Furthermore, "in his fidelity and service to the authority of his Bishop, he [the presbyter] lives the communion called for by the practice of his priestly ministry."[5]

Attitudes of respect and obedience on the part of the clergy towards ecclesial authorities, as discussed in this canon, do not simply respond to manifestations of the exercise of the power of jurisdiction or to motivations of a merely pastoral nature, but rather express essential aspects about the nature and mission of presbyters. Vatican Council II speaks about this purpose of a "hierarchical communion" with the body of bishops (cf. *PO* 7), in order to express that the priesthood of presbyters is exercised with the assistance of the bishops' order and under its authority. "All priests, both diocesan and religious," adds the Council in another place, "by reason of Orders and ministry, fit into this Episcopal order" (*LG* 28).

The *Directory*, dated January 31, 1994—after recalling the continued effort of the Church on behalf of the recognition of the equal dignity of all mankind—points out that "the mentality and practice in current cultural and social-political trends of our times are not to be transferred automatically to the Church ... The so-called 'democratization' becomes a grave temptation because it leads to a denial of the authority and major grace of Christ and to distort the nature of the Church; as if it were just a human society. Such a view puts an end to the very hierarchical structure willed

2. CC, *Directory on the ministry and life of priests*, January 31, 1994, no. 22.
3. Ibid., no. 24.
4. Ibid., no. 62.
5. Ibid., no. 24.

by its Divine Founder, as the Magisterium has always clearly taught and the Church herself has lived from the start."[6]

This bond between priests of whatever status and rank and their bishops is essential to the exercise of the presbyteral ministry. Priests receive sacramental power and hierarchical authorization from the bishop for this ministry. Religious, too, as John Paul II explained, "receive that power from the bishop who ordains them as priests and who governs the diocese in which they exercise their ministry. Even those who belong to orders exempted from the jurisdiction of the diocesan bishops because of their internal regulations, receive from the bishop, in accordance with canon law, the mandate and the approval for their incorporation as such and for their activities within the scope of the diocese, always safeguarding the authority by means of which the Roman Pontiff, as head of the Church, may confer upon religious orders and other institutes the power to be governed in accordance with their constitutions and to act worldwide."[7]

The generic situation of presbyters as those who cooperate with the episcopal order needs to be established through *incardination,* which presumes ascription to a pastoral structure for the service to the faithful, and a *canonical mission,* which is conferred upon the presbyter by virtue of his specific ministry.

The theological principle of participation of the priesthood of the second degree in the priesthood of the bishop does not in any way obscure the essential reference to Christ, as sole mediator, whom the presbyters truly represent and in whose name they act. But they do so solely in cooperation with the bishop, thus extending the ministry of the diocesan pastor within the local communities.

The relations between bishops and the presbyters are to unfold, in this way, in a climate of profound spirituality. "By reason of this sharing in the priesthood and the mission of the Bishop, priests should see a true father in him and obey him with all due respect" (*LG* 28). Charity and obedience constitute the essential pair of the spirit that regulates the behavior of the presbyter towards his own bishop. "What is involved is an *obedience*—concluded John Paul II—animated with *charity.* The presbyter, in his ministry, is to have as a fundamental intention to cooperate with his Bishop. If he has the spirit of faith, he recognizes the will of Christ in the decisions of his Bishop."[8] The *Directory* of the congregation for the clergy asserts, in turn, that the presbyter, fully honoring his hierarchical subordination, "will promote a genuine rapport with his Bishop, indicated by sincere confidence, cordial friendship, and true effort towards consonance

6. Ibid., no. 17.
7. JOHN PAUL II, *General Audience,* August 25, 1993, in *L'Osservatore Romano,* Spanish ed., August 27, 1993, p. 3 (English edition: September 1, 1993, p. 7).
8. Ibid.

and convergence in ideals and programs. Nothing should take away from the intelligent capacity for personal initiative and pastoral enterprise."[9]

The canon that is now the subject of our commentary considers presbyters as immediate recipients of the norm. However, consideration of the mutual relations from the perspective of the bishops shapes a wide range of *episcopal duties*, which are the foundation for a good part of the norms defining the status of presbyters.

In general terms, it is appropriate to refer to a concern for the material and, above all, spiritual well-being of their priests; to the grave responsibility to promote their sanctification, by caring for their permanent development; and also to the obligation to study with them those problems pertaining to the needs of pastoral work and to the well-being of the diocese (cf. *PO* 7).

Cooperation on the part of presbyters in the pastoral functions of the bishop presents defined juridical contents, to the point of giving rise to the creation of institutionalized forms of participation in governance, such as the presbyteral council (cf. cc. 495–502).

Finally, the union between presbyters and bishops also becomes necessary for reasons of pastoral effectiveness. In our times, for various reasons, "apostolic undertakings must necessarily not only take on many forms recorded in Vatican Council II but frequently extend even beyond the boundaries of one parish or diocese. No priest, therefore, can on his own accomplish his mission in a satisfactory way. He can do so only by joining forces with other priests under the direction of the Church authorities."(*PO* 7)

This disposition evidently applies to deacons. The *Directory for the Ministry of and Life of Permanent Deacons* encourages a spirit of communion among those working in a diocese, as well as with the bishop himself, while at the same time avoiding "any form of 'corporatism' which was a factor in the decline and eventual extinction of the permanent Diaconate in earlier centuries."[10]

9. CC, *Directory...*, cit., no. 24.
10. CC, *Directory for the ministry and life of permanent deacons*, February 22, 1998, no. 6.

274 **§ 1. Soli clerici obtinere possunt officia ad quorum exercitium requiritur potestas ordinis aut potestas regiminis ecclesiastici.**

§ 2. Clerici, *nisi legitimo impedimento excusentur*, munus, quod ipsis a suo Ordinario commissum fuerit, suscipere ac fideliter adimplere tenentur.

§ 1. Only clerics can obtain offices the exercise of which requires the power of Orders or the power of ecclesiastical governance.

§ 2. Unless excused by a lawful impediment, clerics are obliged to accept and faithfully fulfil the office committed to them by their Ordinary.

SOURCES: § 1: c. 118; SCDF Let. (Prot. 151/76), 8 feb. 1977
§ 2: c. 128

CROSS REFERENCES: cc. 129, 273, 494, 1421

COMMENTARY

Jorge de Otaduy

1. The two paragraphs of this canon—which refer to heterogeneous realities—have in common the reference to the ecclesiastic office

The first does not state a right or duty, but instead simply recognizes an aptitude or generic capability of the clergy to discharge the offices whose exercise requires the power of orders or the power of ecclesiastical governance. Expressed in these terms, such an affirmation becomes unquestionable. The priesthood presupposes participation in the authority with which Christ builds up, sanctifies and governs his body, contained in the *tria munera—docendi, sanctificandi et regendi*—received through the sacrament of orders.

It happens, however, that, according to the literal language of this canon, the exercise of the power of ecclesiastical governance would be limited in scope to the clergy, with exclusion of the other members of the faithful.

There is no doubt, on one hand, that only the clergy possesses the power of sacred orders, as received through the sacrament. But it is also true that the laity may cooperate, according to the law, in the exercise of the power of governance (c. 129), as well as participate in judicial power (c. 1421 § 2), or called to discharge ecclesiastical offices (c. 228).

Behind these apparent legislative paradoxes, there lies, as can easily be observed, the difficult question of origin and the basis of the power that exists in the Church by divine will.[1]

This is not the appropriate place to discuss the background of this subject, or for presenting the various positions formulated in this regard by the vast scientific doctrine. For our purposes, two clarifications are sufficient:

a) that it is evidently difficult to reach an interpretation which harmonizes the canons intended to determine the subjects who exercise the power of ecclesiastical governance, and that such difficulty extends through the special legislation subsequent to the *CIC*[2]; and

b) that the literal language of c. 274 § 1 excludes members of the faithful who are not ordained to hold offices and provide functions that objectively require sacred orders or that historically have been attributed to the *ordo clericorum,* but it does not prevent recognition of a truly jurisdictional cooperation—a strict exercise of ecclesiastical power—on the part of the lay faithful.

2. Paragraph 2 of c. 274 points out the duty of canonical obedience and availability for the ministry, inherent to the clergy.

The reason for this obligation is the essential dependence of the presbyter in regard to the bishop, as a consequence of his participation in the episcopal ministry (see commentary on c. 273). "The priestly ministry—affirms Vatican Council II—being the ministry of the Church itself, can only be fulfilled in the hierarchical union of the whole body of the Church" (*PO* 15).

The immediate foundation of this duty rests on incardination, which concretely seeks precisely the ministerial service of those who are ordained to a particular church or to the pastoral structure into which they are to be incorporated.

Vatican Council II has decisively fostered the freedom of the bishop in the assignment of positions (cf. *CD* 28 and 31). This line of action obviously tends to achieve better service to the pastoral task of the Church, but it requires a balance between certain precise juridical guarantees that allow for the correction of errors in governance or abuses of power which may harm justice. It should not be forgotten that, while c. 274 § 2 formalizes one of the duties of the clergy, it recognizes at the same time—although it does so implicitly—one of their most radical rights: to have their bishop entrust a concrete mission, an ecclesiastical ministry, to them. "As with all subjective rights, the latter also has its limitations—Rincón-Pérez

1. See commentary on c. 129 and introduction to *Liber* I, tit. VIII, *De potestate regiminis.*
2. I refer, in particular, to the Ap. Const. *Pastor Bonus.*

has written—but those reasons which seek to justify a limitation or denial of this right must be serious and rest on a foundation of the *salus animarum*."[3]

The scope of priestly obedience clearly goes farther than what has been pointed out in c. 274. Incardination links the presbyter, not only to the bishop, but also to other members of that portion of the people of God in which his ministry takes concrete form: presbyterate and Christian people.

This three-dimensional relationship of the ministry has allowed John Paul II to point out the characteristics of obedience of the priest. The first relationship, established with the Pope and the bishop, causes this to be an apostolic obedience. A common demand is born from the second, given that the presbyter is deeply immeshed in the unity of the presbyterate. And finally, the pastoral nature of priestly obedience means constant availability for service to the flock.[4]

It can be clearly inferred from what has been said until now that the scope of canonical obedience and availability is determined by the sacred ministry and by everything which has a direct and immediate objective relationship with the ministry.[5] In other areas of life the presbyter enjoys a wide space of autonomy, such as, in his cultural formation, administration of his goods, social relationships or spiritual life.

In regard to this latter aspect, it must be pointed out that all priests participate in a common basic spirituality, which is a consequence of their sacramental configuration in Christ, the priest and shepherd. Within that generic priestly spirituality, belonging and devotion to the service of a particular church has a sufficient importance so as to configure a special lifestyle and pastoral action (cf. *PDV* 31). But, in addition, "other insights or reference to other traditions of spiritual life can contribute to the priest's journey toward perfection, for these are capable of enriching the life of individual priests as well as enlivening the presbyterate with precious spiritual gifts" (*PDV* 31), which remain at the free personal discretion of presbyters. "To the extent that the form of spirituality which is sought appears as endowed with a greater durability and encompasses more dimensions of life itself, to that same extent, choice must be made, not only as one's own initiative, but also as an expression of a particular offer of God.

3. J. FERRER ORTIZ-T. RINCÓN-PÉREZ, "Los sujetos del ordenamiento canónico," in *Manual de Derecho canónico*, 2nd ed. (Pamplona 1991), p. 194.

4. Cf. *PDV*, no. 28 and the commentary of T. RINCÓN-PÉREZ, "Sobre algunas cuestiones canónicas a la luz de la Ap. Exhort. 'Pastores dabo vobis'," in *Ius Canonicum* 23 (1993), pp. 315–378.

5. Cf. J. FERRER ORTIZ-T. RINCÓN-PÉREZ, "Los sujetos del ordenamiento canónico...," cit., p. 189.

In this way, freedom towards others is given and is justified precisely in order to guarantee docility to the Paraclete."[6]

In summary, canonical obedience does not entail an attitude of mere passivity, but rather is configured as co-responsibility in the ministry. Personal initiative should guide the priest in his search for a fraternal dialogue with his own bishop or with other immediate superiors, provided, however, that he is always willing to submit to the judgment of those who exercise the primary function of governance over the people of God.[7]

6. J.I. BAÑARES, "Libertad y docilidad en la espiritualidad del sacerdote y de los demás fieles cristianos," in *La formación de los sacerdotes en las circunstancias actuales* (Pamplona 1990), p. 729.

7. Cf. *PO* 15; CC, *Directory on the ministry and life of priests*, January 31, 1994, no. 24.

275 **§ 1. Clerici, quippe qui omnes ad unum conspirent opus, ad aedificationem nempe Corporis Christi, vinculo fraternitatis et orationis inter se uniti sint, et cooperationem inter se prosequantur, iuxta iuris particularis praescripta.**

§ 2. Clerici missionem agnoscant et promoveant, quam pro sua quisque parte laici in Ecclesia et in mundo exercent.

§ 1. Since all clerics are working for the same purpose, namely the building up of the body of Christ, they are to be united with one another in the bond of brotherhood and prayer. They are to seek to co-operate with one another, in accordance with the provisions of particular Law.

§ 2. Clerics are to acknowledge and promote the mission which the laity, each for his or her own part, exercises in the Church and in the world.

SOURCES: § 1: *PO* 8; PAULUS PP. VI, Enc. *Sacerdotalis caelibatus*, 24 iun. 1967, 79 (*AAS* 59 [1967] 688–689); *RFIS* 3, 6, 46, 47; *UT* 912–913
§ 2: PIUS PP. XI, Enc. *Firmissimam constantiam*, 28 mar. 1937 (*AAS* 29 [1937] 190–199); *AA* 25; *PO* 9

CROSS REFERENCES: cc. 225, 227, 278, 280, 287 § 1, 495, 555 §§ 2 et 3

COMMENTARY

Jorge de Otaduy

1. In consonance with the provisions set forth in the two preceding canons, this canon continues with the development of consequences which, for clerics, arise from ecclesial communion. The sacred ministry, in effect, is a bond not only with the bishop, but also to the other members of that portion of the people of God in which the priest exercises his pastoral work: presbyterate and the other members of the faithful.

Paragraph 1 refers to the duties of fraternity and mutual cooperation among presbyters. The conciliar text of reference is, first and foremost, number 8 of *Presbyterorum ordinis*, where it states that the foundation for fraternal relations among priests consists of a double element. The first is ontological in nature: the common participation of the priesthood

of Christ. The second, of a more existential nature, is the fruit of a priest grounded in a concrete ecclesial reality, which gives rise to a spontaneous sense of belonging to the presbyterate.[1]

The first element has a pre-eminent value, insofar as it refers to the sacramental roots around which any reflection on the priesthood should revolve and which specifies a set of bonds and relations inherent to presbyters, not reducible to those generated by baptism. The second, on the contrary, refers to fraternity and mutual cooperation as an expression of the unity of mission. In effect, while presbyters "may be assigned different duties, yet they fulfill the one priestly service for people. Indeed, all priests are sent to cooperate in the same work. This is true whether the ministry they exercise be parochial or supra-parochial; whether their task be research or teaching, or even if they engage in manual labor and share the lot of the workers, where that appears to be of advantage and has the *approval of the competent authority*; or finally if they carry out other apostolic works or those directed towards the apostolate. They all contribute to the same purpose, namely the building up of the body of Christ, and *this, especially in our times,* demands many kinds of duties and fresh adaptations. For this reason it is of great importance that all priests, whether diocesan or religious, should help each other, so that they may be fellow-helpers of the truth" (*PO* 8).

The joint interpretation of conciliar texts as a whole, relating to access to the diocesan presbyterate, allows us to conclude that the rule of belonging is not incardination, but the pastoral function on behalf of the diocese, through ministerial tasks of generic pastoral cooperation or of specialized apostolic assistance.[2]

The fundamental theological reason for which all priests who contribute to the building of that *portio populi Dei* should integrate themselves into the presbyterate of a particular church is found in the recognition that, in this latter entity, the one and catholic Church *vere inest et operatur* (*CD* 11) and that the particular church is *imago* of the universal Church (cf. *LG* 23).[3]

Significant consequences at a juridical level can be deduced from such a principle. One of them is the right of election, active as well as passive, of priests not incardinated in the diocese who exercise certain pastoral work on its behalf (whether secular clergy or members of a religious

1. Cf. JOHN PAUL II, *General Audience*, September 1, 1993, in *L'Osservatore Romano*, Spanish ed., September 3, 1993, p. 3 (English edition: September 8, 1993, p. 11).
2. Cf. *CD* 34; *PO* 8; and *AG* 20. These topics have also been addressed in *CIC*, c. 478 §1, 2°.
3. For the most recent doctrine, cf. A. CATTANEO, *Il presbiterio della Chiesa particolare* (Milan, 1993).

institute or a society of apostolic life).[4] Another consequence of this criterion used to define belonging in the presbyterate, insofar as what specifically is of greatest interest to us here, is the extension of the duty of fraternity and priestly cooperation, in their greatest breadth.

Canon 275 § 1 is intended to formalize this duty in strict terms, and with the sparseness of words inherent to juridical language, it omits making any reference in that passage to the means needed for its observance. *Presbyterorum ordinis* focuses on this aspect and recalls, in the first place, the generic obligations that derive from the practice of charity, especially with priests who are in need. The appropriateness of recourse to other specific means pointed out is described below. Thus, for example, we can speak about priestly meetings, of the opportunity to live some kind of common life, and of the diligent fostering of priestly associations (cf. *PO* 8). The implementation of such means falls within the scope of other rights or duties of the clergy that are formalized in subsequent canons.

Taking into account that the primary obligation of the priest consists in his own sanctification, priestly fraternity will find privileged channels of expression on the spiritual plane. In this way, the practice of fraternal correction—the exercise of which is particularly needed on behalf of those who are experiencing moments of difficulty in their ministry (*PO* 8)—spiritual direction, and administering the sacraments, in particular that of reconciliation, are highly effective means to reinforcing the common bonds of fraternity. The most recent guidelines of the ecclesial magisterium clearly stress the appropriateness of recourse to these means: "In order to contribute to improving one's spiritual life, it is necessary for presbyters themselves to practice spiritual direction. When placing the formation of their souls in the hands of a wise brother, they will mature—from the first steps of their ministry—the awareness of the importance of not walking alone along the path of spiritual life and of pastoral endeavors. For the use of this highly effective means of formation as experienced in the Church, presbyters will have full freedom of choice of the person to whom they will entrust the direction of their own spiritual life."[5]

2. Significant issues in the theology of the laity, emphasized by Vatican Council II with great energy, are implied in the synthetic affirmation of § 2 in this canon: the relations between the common priesthood and the ministerial priesthood, co-responsibility of the laity in the building up of the Church, or freedom of the laity in secular matters, to cite but a few examples.

4. Cf. c. 478 §1, 2°; and CC, *Directory on the ministry and life of Priests*, January 31, 1994, no. 26.
5. CC, *Directory*..., cit., no. 54.

Presbyterorum ordinis, in number 9, considers the relations of presbyters with laypersons in light of the living, active and organic community, which the priest is called upon to form and guide. For this reason, it recommends that presbyters recognize and foster the *dignity* of laypersons, in accordance with their status as children of God and the peculiar nature of their vocation in the Church, whose final purpose, in a special way, is "to seek the kingdom of God by engaging in temporal affairs and directing them according to God's will" (*LG* 31).

Participation of the laity in the threefold priestly, prophetic and kingly office of Christ takes place *suo modo*, according to their own ecclesial condition, characterized by their secular nature. It follows from this that "their own field of evangelizing activity—as Paul VI has pointed out—is the vast and complicated world of politics, society and economics, but also the world of culture, the sciences and the arts, international life, the mass media. It also includes other realities which are open to evangelization, such as human love, the family, the education of children and adolescents, professional work, suffering. The more Gospel-inspired lay people there are engaged in these realities, clearly involved in them, competent to promote them and conscious that they must exercise to the full their Christian powers which are often buried and suffocated, the more these realities will be at the service of the kingdom of God and therefore of salvation in Jesus Christ, without in any way losing or sacrificing their human content but rather pointing to a transcendent dimension which is often disregarded" (*EN* 70).

This luminous text of recent magisterium illustrates, in perfect consonance with the Council, the transcendence of the apostolic mission of the laity, to whom belongs, in an operational sense, the task of producing the growth of the kingdom of God *in history* and of constituting the path through which the Church is to act as a vital principle in human society.

The provision in the system of norms we are now commenting on—from the perspective of clerics, as it corresponds to the systematic position they hold—tends to protect the right of laypersons to fulfill the sublime mission which God has entrusted to them and which has an *essential* character in the Church.[6] This canon justifies its presence without difficulty, if we bear in mind that concealment, in theology and in the law of the Church, of the potentiality of the apostolate of the laity has given rise to the manifestation of undesirable forms of clericalism. This phenomenon, at the present time in open retreat, of the participation of clerics in secular offices is not entirely unfamiliar to what has just been said. This possibility is configured today as a hypothetical situation, of a completely extraordinary nature.

6. Cf. JOHN PAUL II, *General Audience*, September 22, 1993, in *L'Osservatore Romano*, Spanish ed., September 24, 1993, p. 3 (English edition: September 29, 1993, p. 11).

The *Directory* of January 31, 1994, calls attention to new forms of *clericalization* of the laity, which occur when attempts are made to entrust truly pastoral functions to laypersons. "This attitude—it can be read—tends to diminish the ministerial priesthood of the presbyter; in point of fact, the term *pastor* can only be attributed, in an inherent and univocal sense, to the presbyter, after the bishop, which is so by virtue of the priestly ministry received with ordination. The adjective *pastoral*, then, refers both to the *potestas docendi et sanctificandi* as well as the *potestas regendi*. In all other respects—continues the *Directory*—, it must be said that such tendencies do promote a true fostering of the laity, since that *clericalism* often leads to forgetting the authentic vocation and ecclesial mission of lay people in the world."[7]

Presbyters should respect the due freedom of the laity, understanding that "to preside over the community does not mean to dominate it, but rather to be at its service."[8] Laypersons, in this way, shall adopt, in light of the principles set forth by the magisterium, those decisions which they judge in conscience to be most appropriate in relation to politics, the economy, culture or the concrete problems in their professional or social life. "The existence, also among Catholics, of an authentic pluralism of judgments and of opinions in those matters left by God to the free discussion among people not only does not oppose hierarchical ordination and the necessary unity of the people of God, but instead strengthens and defends it against possible impurities."[9]

Insofar as the exercise of the apostolate is concerned, laypersons do not need the mandate of the hierarchy—although they may receive it for certain tasks—but rather they are invited to "undertake their works on their own initiative"(*PO* 9; cf. *CD* 37), in accordance with their radical condition as Christians. A function of the priest will be to awaken and develop co-responsibility in the common and sole mission of salvation, as well as to value all the charisms which the Spirit offers believers for the building up of the Church (cf. *PDV* 74). "More specifically—adds the *Directory*—, the parish priest, always in search of the common good of the Church, shall foster associations of the faithful and movements which set for themselves religious purposes, accepting them all and helping them to find unity among each other, in prayer and in apostolic action."[10]

"Among the other gifts of God which are found abundantly among the faithful, special attention ought to be devoted to those graces by which a considerable number of people are attracted to greater heights of the spiritual life" (*PO* 9). The presbyter, as one who serves all, should

7. CC, *Directory*..., cit., no. 19.
8. Cf. ibid.
9. *Conversations with Monsignor Escrivá* (Madrid 1977), p. 34.
10. CC, *Directory*, January 31, 1994, cit., no. 30.

show himself to be sensitive to what John Paul II has called "the new demands of the laity, who are more desirous than ever of following the path of Christian perfection which the Gospels offers."[11] As a result, continues the Pontiff, "a new recognition and a new commitment to the ministry of the confessional and of spiritual guidance must be deeply impressed upon presbyters."[12]

11. JOHN PAUL II, *General Audience*, September 22, 1993, in *L'Osservatore Romano*, Spanish ed., September 24, 1993, p. 3 (English edition: September 29, 1993, p. 11).
12. Ibid.

276 **§ 1. In vita sua ducenda ad sanctitatem persequendam peculiari ratione tenentur clerici, quippe qui, Deo in ordinis receptione novo titulo consecrati, dispensatores sint mysteriorum Dei in servitium Eius populi.**

§ 2. Ut hanc perfectionem persequi valeant:

1° imprimis ministerii pastoralis officia fideliter et indefesse adimpleant;

2° duplici mensa sacrae Scripturae et Eucharistiae vitam suam spiritualem nutriant; enixe igitur sacerdotes invitantur ut cotidie Sacrificium eucharisticum offerant, diaconi vero ut eiusdem oblationem cotidie participent;

3° obligatione tenentur sacerdotes necnon diaconi ad presbyteratum aspirantes cotidie liturgiam horarum persolvendi secundum proprius et probatos liturgicos libros; diaconi autem permanentes eandem persolvant pro parte ab Episcoporum conferentia definita;

4° pariter tenentur ad vacandum recessibus spiritualibus, iuxta iuris particularis praescripta;

5° sollicitantur ut orationi mentali regulariter incumbant, frequenter ad paenitentiae sacramentum accedant, Deiparam Virginem peculiari veneratione colant, aliisque mediis sanctificationis utantur communibus et particularibus.

§ 1. Clerics have a special obligation to seek holiness in their lives, because they are consecrated to God by a new title through the reception of orders, and are stewards of the mysteries of God in the service of His people.

§ 2. In order that they can pursue this perfection:

1° they are in the first place faithfully and untiringly to fulfil the obligations of their pastoral ministry;

2° they are to nourish their spiritual life at the twofold table of the sacred Scripture and the Eucharist; priests are therefore earnestly invited to offer the eucharistic Sacrifice daily, and deacons to participate daily in the offering;

3° priests, and deacons aspiring to the priesthood, are obliged to carry out the liturgy of the hours daily, in accordance with their own approved liturgical books; permanent deacons are to recite that part of it determined by the Bishops' Conference;

4° they are also obliged to make spiritual retreats, in accordance with the provision of particular law;

5° they are exhorted to engage regularly in mental prayer, to approach the sacrament of penance frequently, to honour the Virgin Mother of God with particular veneration, and to use other general and special means to holiness.

SOURCES: § 1: c. 124; PIUS PP. XI, Enc. *Firmissimam constantiam*, 28 mar. 1937 (*AAS* 29 [1937] 190–199); *LG* 28, 41; *PO* 12, 13
§ 2, 1°: *LG* 41; *PO* 12, 14, 18, 19; *UT* 913–915; *DPMB* 109
§ 2, 2°: PIUS PP. XII, Alloc., 24 iun. 1939 (*AAS* 31 [1939] 249); *MD* 562–566, 568–576; PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 26 sep. 1950 (*AAS* 42 [1950] 666–673); IOANNES PP. XXIII, Enc. *Sacerdotii nostri primordia*, 1 aug. 1959 (*AAS* 51 [1959] 545–579); *DV* 25; *PO* 14, 18, 19; *SDO* 26; *RFIS* 53; *UT* 913–915
§ 2, 3°: c. 135; *MD* 581–583; PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 26 sep. 1950 (*AAS* 42 [1950] 669); *SC* 86–99; *SDO* 27; PAULUS PP. VI, Enc. *Sacerdotalis caelibatus*, 24 iun. 1967, 28 (*AAS* 59 [1967] 668); PAULUS PP. VI, Ap. Const. *Laudis Canticum*, 1 nov. 1970 (*AAS* 63 [1970] 534); GILH 17, 29; *UT* 913–915
§ 2, 4°: c. 127; PIUS PP. XI, Ap. Const. *Summorum Pontificum*, 25 iul. 1922 (*AAS* 14 [1922] 420–422); PIUS PP. XI, Enc. *Mens nostra*, 20 dec. 1929 (*AAS* 21 [1929] 689–706); *CD* 16; *PO* 10; *SDO* 28; *UT* 913–915; *DPMB* 110
§ 2, 5°: c. 125; PIUS PP. XII, Exhort. Ap. *In auspicando*, 28 iun. 1948 (*AAS* 40 [1948] 374–375); *LG* 66; *PO* 18; *SDO* 26; *UT* 913–915; PAULUS PP. VI, Exhort. Ap. *Marialis cultus*, 2 feb. 1974, 43–51 (*AAS* 66 [1974] 153–160); IOANNES PAULUS PP. II, Let. *Novo incipiente*, 8 apr. 1979 (*AAS* 71 [1979] 412, 415, 416)

CROSS REFERENCES: cc. 278, 279, 388, 429, 534, 904, 1173–1175

COMMENTARY

Jorge de Otaduy

1. The obligation to seek holiness occupies ontological priority among all the duties of the clergy. The unique lifestyle that is configured within the canonical statutes on the clergy is conceived as deriving from the radical direction of the life of the presbyter towards holiness and perfection of charity in the service of God and his fellow brothers. The sys-

tem of precepts contained in the Decree *Presbyterorum Ordinis* and in the *CIC* itself[1] is a response to this principle.

It would be incorrect to undervalue the character of the norms contained in the *CIC*, by reducing them to precepts merely of a moral nature. They are, on the contrary, true juridical norms promulgated by the supreme legislator, which are based, to a large degree, on divine law. In this sense, c. 276 establishes a duty that has a juridical significance, and not just a moral dimension.

The essential features of the juridical nature of an obligation are twofold. The first is the external aspect. A right—and its correlative duty—is born and develops in a social relationship, as something that must be given, and therefore, as something that can be communicated. The second is a state of otherness. A right is what is owed; a right belonging to an individual becomes a right precisely insofar as it has a relationship to the duty of another.

Thus, both features appear in the obligation that is formalized in c. 276. It offers an external dimension that is projected onto certain individuals as holders of the right, who are members of the people of God, and in particular, those members of the faithful whom the presbyter services with his ministry. The *Directory for the Ministry and Life of Priests* explicitly recalls: "The care for the spiritual life should be felt as a joyful duty on the part of the priest himself, and also as a right of the faithful who seek in him, consciously or not, the *man of God*, the counselor, the mediator of peace, the faithful and prudent friend, the sure guide to confide in during the more difficult moments in life to find encouragement and security."[2]

The fact that sacramental effectiveness, a consequence of the configuration to Christ through the sacrament of orders, is independent of the holiness of the minister as far as their essential effects are concerned, does not contradict what has just been said. The effort to seek personal sanctification continues to be necessary in order to bring about what could be called the *full effectiveness of ministerial service.*

Nor is this obligation excluded from the scope of what is juridical, by virtue of the fact that it is not susceptible to coercion. This is what happens with many manifestations of juridical duty. Coercion is a characteristic common to many rights, but it is not an essential feature of such rights: those rights that consist of highly personal benefits are not subject to coercion. However, such rights that are not susceptible to coercion are true rights, because they are true debts of justice.

1. Cf. *PO* ch. III: Regarding the life of the priest: I. Vocation of the priest to perfection (nos. 12–14); II. Spiritual requirements for the life the priest (nos. 15–17); III. Help for the life of the priest (nos. 18–21).
2. CC *Directory on the ministry and life of priests*, January 31, 1994, no. 39.

2. Canon 276 echoes the theological depth of Vatican Council II about the vocation of holiness of all the faithful in the Church. Thus, the reference to the *greater holiness* that could be demanded of presbyters, in contrast to laypersons, about which c. 124 of the *CIC*/1917 spoke, was eliminated, in evident contrast to the subsequent affirmation of the Council about the call to holiness of all the faithful without distinction (cf. *LG* 40). Paragraph 1 of the canon, which is now the subject of our commentary, is expressed with great theological richness, which refers back, in terms of its literal text, to *PO* 12.

The recent pontifical magisterium about the holiness of presbyters has found particularly eloquent expression in no. 27 of *PDV* "The Holy Spirit poured out in the sacrament of holy orders is a source of holiness and a call to sanctification. Such is the case, not only because it configures the priest to Christ, the head and shepherd of the Church, entrusting him with a prophetic, priestly and royal mission to be carried out in the name and person of Christ, but also because it inspires and enlivens his daily existence, enriching it with gifts and demands, virtues and incentives which are summed up in pastoral charity."

Priestly holiness is specified, in the first place, by virtue of the title, because presbyters are called "not only because they have been baptized, but also and specifically because they are priests" (*PDV* 19). The ways in which a presbyter lives his following of Jesus Christ, head and pastor are also specific and original. The evangelical radicalism which is characteristic of priests is a demand "not only because they are 'in' the Church, but because they are '*in the forefront*' of the Church, inasmuch as they are configured to Christ, the head and shepherd, equipped for and committed to the ordained ministry, and inspired by pastoral charity" (*PDV* 27).

Within this radicalism, and as its manifestation, "one can find a blossoming of many virtues and ethical demands which are decisive for the pastoral and spiritual life of the priest, such as faith, humility in relation to the mystery of God, mercy and prudence" (*PDV* 27).

The evangelical radicalism inherent to the presbyter does not entail superiority in relation to other Christian modes of living holiness, nor assimilation to the specific radicalism of the religious life. Evangelical virtues which he should practice are not limited to the three classic virtues of poverty, chastity, and obedience, even though these are also to be lived, according to his given position in the Church, as privileged expressions of his radical following of Jesus Christ, head and pastor, spouse and servant (cf. *PDV* 28–30).

The issues in reference to priestly spirituality exhibit a clear connection with those that pertain to holiness. In the Council, debates held over *PO* were abundantly raised, even though no response was given in definitive terms.

There exists a basic priestly spirituality that is radically grounded in the consecration and mission conferred by the sacrament of orders. This is the line of argument of *PO* in nos. 12–14, which displays the unity of life as the ideal to which priestly conduct should be directed.

Furthermore, "The priest needs to be aware that his 'being in a particular Church' constitutes by its very nature a significant element in his living a Christian spirituality" (*PDV* 31). Incardinated status, in this way, reveals itself as a *sufficient potentiality*,[3] so as to make a path of holiness from it. Sufficiency, however, does not imply exclusivity: "Other insights or references to other traditions of spiritual life can contribute to the priest's journey toward perfection, for these are capable of enriching the life of individual priests as well as enlivening the presbyterate with precious spiritual gifts" (*PDV* 31).

3. Paragraph 2 of c. 276 proceeds to indicate the means by which perfection can be achieved.[4] This precept, taken as a whole, has a radical juridical content, even though different means become necessary in different ways.

The exercise of the sacred ministry is the end towards which those who receive the sacrament of orders aim, and it is also the natural sphere for exercising all priestly virtues. It is from this perspective that the faithful performance of pastoral work appears as a necessary prerequisite for sanctification of the priest.

The priestly ministry reaches its culmination in the celebration of the sacred Eucharist.[5] For this reason, the eucharistic sacrifice is "the center and root of the whole life of the priest" (*PO* 14), and its celebration his primary function. This duty may be more compelling as a consequence of a special obligation joined to the position.[6]

Two actions become necessary through the use of the expression *obligatione tenentur*, used in the *CIC* to describe mandates of higher rank:[7] the prayer of the liturgy of the hours and the assistance of spiritual retreats.

3. Cf. T. Rincón, "Sobre algunas cuestiones canónicas a la luz de la Exh. Apost. *Pastores dabo vobis*," in *Ius Canonicum* 65 (1993), p. 346.

4. The CC, in the *Directory*, January 31, 1994, cit., gives a detailed account of the appropriate direction for the spiritual life of the priest, and in each case refers to the recent texts of the Magisterium. With regard to the particular aspects of priestly spirituality, one should take into account the development presented in the *Directory*, especially chap. II.

5. Cf. *LG* 28; also cf. CC, *Directory...*, cit., nos. 48–50.

6. Thus, e.g., c. 388 refers to the bishops, c. 429 to the diocesan administrator, and c. 534 to the parish priest.

7. Cf., for example, c. 277 §1, regarding the celibacy of the clergy; c. 1247, regarding the obligation of the faithful to attend Holy Mass on the holy days of obligation.

The liturgy of the hours forms part of the public worship of the Church,[8] and its celebration constitutes a grave obligation of clerics, although the mandate does not affect all the hours equally. It affects primarily the hours of Laudes and Vespers, "the double frame on which turns the daily office" (*SC* 89), which should not be omitted, except for a grave cause (cf. GILH 29). The norm in the Code on this subject—just as the provisions established after the restructuring of the liturgy of the hours undertaken by Vatican Council II[9]—is found to be in perfect continuity with the prior system of norms and does not modify its obligatory character (*c.* 135 *CIC*/1917).

The recourse to the interpretation of law in order to omit this prayer is only appropriate—according to a response of the SCSDW—in special cases of true impossibility: "Formanda est enim sacerdotum conscientia, ut in casu singulari verae impossibilitatis sana aequitate, seu epieikeia, uti valeant."[10] Among these excusable causes can be found, of course, lawful dispensation, since the obligation to recite the divine office is not derived from part of natural law or positive divine law, but from ecclesiastical law. The possibility of commutation of this duty for reciting other prayers is appropriate to the extent and in the manner that it may be expressly authorized by the ordinary himself.

In terms of strict obligation, the duty to attend spiritual retreats is also formalized.[11] This precept is to be interpreted within the context of the right and duty of the priest to receive continuing permanent formation.

Canon 276 mentions still other means by which the priest should pursue the task of his own sanctification. These are: mental prayer, by means of which "presbyters seek and fervently ask God for that spirit of true adoration (by means of which) they can more intimate join with Christ, mediator of the New Testament"[12]; the frequent reception of the sacrament of penance, "whose methodical practice allows the presbyter to form himself in a realistic image, with the resulting awareness that he is also a fragile and poor man, a sinner among sinners and in need of forgiveness";[13] and devotion to the most Holy Virgin, who is, for the priest, the perfect model of his life and his ministry.[14]

8. Cf. CC, *Directory* of January 31, 1994, cit., no. 50.
9. Cf. Ap. Const. *Laudis canticum*, November 1, 1970, no. 8; GILH, no. 29 (with modifications introduced in 1983), in *Notitiae* 206 (1983), p. 555.
10. *Notitiae* 249 (1987), p. 250.
11. Cf. CC, *Directory*, January 31, 1994, cit., no. 85.
12. *PO* 18; also cf. CC, *Directory*..., cit., nos. 38–42.
13. *RP*, 31. Cf. CC, *Directory*..., cit., nos. 53–54.
14. Cf. CC, *Directory*..., cit., no. 68.

277 **§ 1. Clerici obligatione tenentur servandi perfectam perpetuamque propter Regnum coelorum continentiam, ideoque ad coelibatum adstringuntur, quod est peculiare Dei donum, quo quidem sacri ministri indiviso corde Christo facilius adhaerere possunt atque Dei hominumque servitio liberiussese dedicare valent.**

§ 2. Debita cum prudentia clerici se gerant cum personis, quarum frequentatio ipsorum obligationem ad continentiam servandam in discrimen vocare aut in fidelium scandalum vertere possit.

§ 3. Competit Episcopo dioecesano ut hac de re normas statuat magis determinatas utque de huius obligationis observantia in casibus particularibusiudicium ferat.

§ 1. Clerics are obliged to observe perfect and perpetual continence for the sake of the Kingdom of heaven, and are therefore bound to celibacy. Celibacy is a special gift of God by which sacred ministers can more easily remain close to Christ with an undivided heart, and can dedicate themselves more freely to the service of God and their neighbour.

§ 2. Clerics are to behave with due prudence in relation to persons whose company can be a danger to their obligation of preserving continence or can lead to scandal of the faithful.

§ 3. The diocesan Bishop has authority to establish more detailed rules concerning this matter, and to pass judgment on the observance of the obligation in particular cases.

SOURCES: § 1: cc. 132, 133 § 1; *PO* 16; *UT* 912–913
§ 2: c. 133 § 3; *PO* 16
§ 3: c. 133 § 3

CROSS REFERENCES: cc. 247, 291, 1037, 1087

COMMENTARY

Jorge de Otaduy

1. Two distinct contents around the subject of the celibacy of clerics can be distinguished in § 1 of this canon: on one hand, formulation of the law in precise juridical terms and, secondly, its theological standing.

It is not proper for a commentary of this kind to focus on the theological-spiritual aspects of priestly celibacy.[1] It is sufficient to stress here the consideration which celibacy receives in § 1 of the present canon as a gift of God, highly becoming for those who exercise the sacred ministry, in view of the profound care which he has for his mission.[2]

The bond of celibacy, freely assumed, is a sign of the reality of betrothal which is undertaken in sacred ordination and which is, first and foremost, of a theological and moral nature, but in addition, finds itself "sanctioned by a precise juridical bond from which the moral obligation of observance derives."[3]

Recovery of the expression *perfect and perpetual continence*—deeply rooted in the canonical tradition—warrants a more favorable treatment than the term *chastity*—as used in c. 132 of the *CIC*/1917—because it helps to emphasize that the virtue is equally appropriate to all the faithful in any of the conditions of life in which they may find themselves.

From a juridical perspective, the law of celibacy produces the following effects:

a) It generates the impediment of holy orders in regard to marriage.

The nullity of marriage of those who are ordained *in sacris* relies on a long-standing tradition in the Church. It was initially established in this way by the norms of particular law, which were subsequently adopted by pontifical provisions and general councils. Canon 1072 of the *CIC*/1917, on the other hand, indicated in a restricted way that "clerics who have received sacred orders invalidly attempt to enter into marriage." The current c. 1087 is expressed in nearly identical terms (cf. commentary).

b) The canonical system reacts, when confronted by the non-observance of the law of celibacy, with warnings and sanctions.

According to the language in c. 194, 1, 3°, in effect, the cleric who attempts to enter into marriage, even though it may only be under civil law, is removed from ecclesiastical office, by virtue of the law itself. The indi-

1. There is an abundance of literature regarding this issue. The *Directory on the Ministry and Life of Priests*, January 31, 1994, nos. 57–60, has explained the doctrine of the Church.
2. Cf. CC, *Directory*..., cit., no. 60.
3. CC, *Directory*..., cit., no. 59.

cated conduct likewise generates an irregularity to receive subsequent orders (c. 1041, 3°) or to exercise orders already received (c. 1044 § 1, 3°). And it gives rise to the application of the penalty of suspension *latae sententiae* (c. 1394). A censure may be added to the preceding, in the event that his contumacy increases and the scandal continues, optional expiatory penalties of deprivation *ferendae sententiae*, which may be increased up to the maximum penalty, which is expulsion from the clerical state.

c) The law of celibacy is liable to dispensation, but the latter does not immediately follow from the loss of clerical state. Rather, it requires a separate procedure and special concession granted by the Roman Pontiff, in each case.

This way of proceeding, insofar as dispensation from celibacy is concerned, has been traditional under canon law. It was modified by the norms set forth in the SCDF, dated January 13, 1971, by virtue of which the *reduction to the lay state* was done by rescript, which inseparably joined to the loss of clerical state and dispensation from celibacy. Subsequent norms from that same congregation dated October 14, 1980, re-established the prior practice of a separate procedure of the two types of requests and the special intervention of the Roman Pontiff, which has finally crystallized in the current canon 291 of the *CIC*.

2. The current discipline on celibacy in the Latin catholic Church responds to a very ancient tradition which can be traced back to Christ himself, given that—as John Paul II has recalled—"Jesus did not promulgate a *law*, but rather proposed an *ideal* of celibacy for the new priesthood which he was instituting. This ideal has been increasingly affirmed in the Church. It may be understood that, in the first phase of dissemination and development of Christianity, a large number of priests were married men, chosen and ordained following the Judaic tradition [...]. This is a phase of the Church that was undergoing the process of organizing itself, and, to put it in this way, of experimenting with what, as a discipline of the states of life, best reflected the ideal and the *advice* which the Lord had proposed. Based on experience and reflection, the discipline of celibacy has continued to slowly affirm itself, until it has become generalized in the Western Church, by virtue of canonical legislation. It was not only a consequence of a juridical and disciplinary fact; it was the maturation of an ecclesial awareness about the opportunity of priestly celibacy for historical and practical reasons, as well as those deriving from the congruity, understood ever more clearly, between celibacy and the demands of the priesthood."[4]

Canon 277 alludes to this congruity, when it considers celibacy as "a special gift of God by which sacred ministers can more easily remain close

4. JOHN PAUL II, *General Audience*, July 17, 1993, in *L'Osservatore Romano*, Spanish ed., July 23, 1993, p. 2 (English edition: July 21, 1993, p. 11).

to Christ with an undivided heart, and can dedicate themselves more freely to the service of God and their neighbor."

The magisterium of the Church is constant in the affirmation that celibacy, while it does not belong to the essence of the priesthood as an order (*PO* 16), forms part of the *logic of consecration*. It is illustrated using reasons such as the following: it promotes "a fuller adherence to Christ, beloved and served with an undivided heart (cf. 1 Cor 7:32–33); a fuller availability to the service of the kingdom of Christ and to the performance of his own tasks in the Church; a more exclusive choice for a spiritual fruitfulness (cf. 1 Cor 4:15); and the practice of a permanent life beyond this one, and therefore, more exemplary for life here on earth."[5]

The discipline of other Eastern Churches, "who admit married men to the priesthood, does not contradict that of the Latin Church: in fact, those same Eastern Churches demand celibacy of bishops; nor do they accept the marriage of priests or allow second marriages for priests who become widowed. It involves, always and solely, the ordination of men who are already married."[6]

3. Vatican Council II introduced a modification into the regimen of celibacy of clerics through admission of married men of a mature age into the order of deacons (cf. *LG* 29; *SDO*; *AP*). They are precluded, however, from the possibility of a subsequent marriage (cf. *AP* 64). Attempts to eliminate this prohibition, during the task of drafting the *CIC*, were not successful, and the impediment of orders for widowed deacons remains.

4. Paragraphs 2 and 3 of c. 277 refer to the warnings necessary, when dealing with persons who might pose a danger to the obligation to persist in continence or who could be a cause for scandal among the faithful. "It is clear—recalls the *Directory*—that, in order to guarantee and to protect this gift in a climate of serene balance and spiritual progress, all those measures which might distance the priest from all possible difficulties should be put into practice."[7] While the spirit of the norm is the same as that which inspired c. 133 of the *CIC*/1917, the reference now is generic in nature, and the detailed regulation is left, if necessary, to particular legislation.

In addition to the reference, already contained in the canon, which is now the subject of our commentary, in regard to prudence of relationships with those persons whose company might place loyalty to this gift in danger and might even awaken scandal among the faithful, the *Directory* recommends that frequenting places, attending performances or undertaking readings which might endanger observance of the chastity of celibacy be avoided. When making use of social communications media, as agents or

5. Ibid.
6. CC, *Directory...*, cit., no. 60.
7. CC, *Directory...*, cit., no. 60.

as consumers—adds this same document—"they should observe the necessary discretion and avoid anything which might cause harm to their vocation."[8]

Permanent unmarried deacons are subject to the norm of c. 277 in exactly the same manner as presbyters, also for those matters set forth under § 2. Married deacons, however, are not obligated to keep perfect and perpetual continence and may continue their normal married life. In this situation, as is logical, the precepts contained in § 2 would have to be adapted to their particular circumstances of persons held to the bond of matrimonial fidelity, and, at the same time, by that of consecration to the ministry.

8. Ibid.

278 **§ 1. Ius est clericis saecularibus sese consociandi cum aliis ad fines statui clericali congruentes prosequendos.**

§ 2. Magni habeant clerici saeculares praesertim illas consociationes quae, statutis a competenti auctoritate recognitis, per aptam et convenienter approbatam vitae ordinationem et fraternum iuvamen, sanctitatem suam in ministerii exercitio fovent, quaeque clericorum inter se et cum proprio Episcopo unioni favent.

§ 3. Clerici abstineant a constituendis aut participandis consociationibus, quarum finis aut actio cum obligationibus statui clericali propriis componi nequeunt vel diligentem muneris ipsis ab auctoritate ecclesiastica competenti commissi adimpletionem praepedire possunt.

§ 1. Secular clerics have the right of association with others for the achievement of purposes befitting the clerical state.

§ 2. Secular clerics are to hold in high esteem those associations especially whose statutes are recognized by the competent authority and which, by a suitable and well-tried rule of life and by fraternal support, promote holiness in the exercise of their ministry and foster the unity of the clergy with one another and with their Bishop.

§ 3. Clerics are to refrain from establishing or joining associations whose purpose or activity cannot be reconciled with the obligations proper to the clerical state, or which can hinder the diligent fulfillment of the office entrusted to them by the competent ecclesiastical authority.

SOURCES: § 1: *PO* 8; *DPMB* 109c
§ 2: *PO* 8; *UT* 920
§ 3: SCHO Resp. 8 iul. 1927 (*AAS* 19 [1927] 278); *SCCong* Resp., 4 feb. 1929 (*AAS* 21 [1929] 42); SCHO Resp., 11 ian. 1951 (*AAS* 43 [1951] 91); *UT* 912–913

CROSS REFERENCES: cc. 223, 276, 279, 287 § 2, 298

COMMENTARY

Jorge de Otaduy

1. The right of association is a natural right, grounded in the dignity of the human person and, therefore, may be exercised within the jurisdictional sphere of the Church.

All the faithful "may create an association within the Church by virtue of the convergence of their free wills, provided that they pursue lawful ends, and, obviously, that they respect the hierarchical constitution of the people of God."[1]

Paragraph 1 of c. 278 recognizes in a generic sense that secular clerics have the right to associate with others, in order to attain ends that are in accord with their clerical state.[2] "From antiquity, many secular priests have felt the need and appropriateness of making use of the personal advantages derived from the fact of joining others in association for the purpose of cultivating the spiritual life, of fostering ecclesiastical culture, of exercising works of charity and of piety, and in order to pursue other purposes in full consonance with their sacramental consecration and their divine mission."[3]

Together with the area of the ministerial function, which generates a sacramental and juridical bond of dependence to the proper ordinary in all matters regarding the performance of pastoral tasks, there co-exists a legitimate area of personal autonomy, freedom and responsibility. This occurs, for instance, in regard to cultural, economic, social or spiritual aspects.

Commitments may be made within these areas of free action by the cleric, through his voluntary participation in ecclesial or civil associations, provided that, in this latter case, their purposes are congruent with the demands of clerical state.

The exercise of the right of association does not conflict with the incorporation of clerics into the diocesan presbyterate, because they are realities that unfold on different levels. The presbyterate, which is the first form of union of presbyters (cf. *PO* 8), does not constitute an association

1. A. DEL PORTILLO, "Le associazioni sacerdotali," in *Liber amicorum Monseigneur Onclin* (Gembloux 1976), p. 137.
2. For a thorough examination of this material, cf. R. RODRÍGUEZ-OCAÑA, *Las asociaciones de clérigos en la Iglesia* (Pamplona 1989).
3. *SCCong*, Decl., March 8, 1982, I.

of clerics, but rather is a form of organization of the ministry whose source is *incardination*.[4]

2. Canon 278, while it protects the right of association of clerics in all its forms, specifically considers the phenomenon of secular clerics pursuing associations *among themselves*. Even more so, in consonance with the council text from which it originates (*PO* 8), the canon takes interest, *above all*—as can be deduced from § 2—in those priestly associations that foster the sanctity of its members through the ministry and the union among priests and with their own bishop.

Those forms of association which are generated by consecrated life, societies of apostolic life and clerical associations that *make the exercise of sacred orders their own* and which incardinate their members in that same society, lie outside its scope. Nor is specific reference made to those associations of the faithful, whether public or private, in which clerics work together with laypersons. As has been discussed above, c. 278 is concerned with associations of clerics intended to foster the sanctity of their members, precisely in the perfect performance of ministerial duties inherent to the priesthood. Those are associations that, as Vatican Council II has noted, are deserving of special appreciation and diligent encouragement on the part of the Church (cf. *PO* 8).[5]

The function of promotion, as del Portillo maintains, would normally be carried out through the simple approval of the ecclesial authority given to the initiative, "reviewing the statutes with diligence and indicating any corrections which might be truly needed, in a constructive tone; praise or commendation of the association could be added to this, whenever it is considered suitable."[6]

The function of oversight also falls within the competence of the hierarchy—which is clearly different from intervention in the internal governance of the association—whose purpose is that of "preventing the activity of the association from threatening the common good or making it difficult to perform those obligations inherent to clerics, or from becoming a cause of deviation in matters of doctrine (about the nature of the ministerial priesthood, the proper purpose of the Church, etc.)."[7]

3. The mandate contained in § 3 follows along that same line of protection of the common good, by means of which clerics are *prohibited*—the precept of abstention involves prohibition—from creating or participating in associations whose purpose or activity may be incompatible with the obligations inherent to the clerical state or which may be an ob-

4. Cf. CC, *Directory on the ministry and life of priests*, January 31, 1994, no. 17.
5. Cf. CC, Directory..., cit., no. 29.
6. A. DEL PORTILLO, *Le associazioni sacerdotali...*, cit., p. 147.
7. Ibid., p. 148.

stacle to performance of the task which has been entrusted to them by the competent ecclesiastical authority.

The canon fulfills the proper purpose of a juridical text, which should not be limited simply to repeating formulations of the magisterium, but rather should concern itself with confronting and resolving the most relevant problems that the phenomenon of association generates today in the life of the Church.[8]

The text which is now the subject of our commentary is an application of the general principle of the limitation on the exercise of rights, in response to the demands of the common good, the respect for the rights of others, and the performance of duties towards others, according to what is established in c. 223 § 1. Therefore, we do not find ourselves with a limitation of the freedom of clerics, but rather with a requirement for the use of freedom according to the subjective juridical status assumed as a fruit, precisely speaking, of freedom itself.

A *Declaration of the* SCCong *on March 8, 1982*, forestalls any possible abuses in the exercise of the right of association of clerics, which may lead to the rupture of their bond of ecclesiastical communion. It refers to political associations and to those that seek to gather deacons and presbyters into a type of professional union.[9]

The former are rejected because they cloud the priestly mission and break ecclesial communion. The latter are rejected because they conceive of the exercise of the functions of the priesthood in the same terms as those of a labor relationship, thereby losing the sacramental roots of the ministry. They turn into genuine pressure groups in order to obtain improper or false reforms in the structure of the Church itself or to impose one's own points of view in those matters concerning the pastoral work which sacred ministers should undertake.

The document reminds the hierarchy of the right and the duty they have to watch over, control, prohibit, penalize and punish, even using censures, those clerics who establish or participate in associations of this type.[10]

4. It is clear that the right of association is configured within a purely instrumental nature in regard to the exercise of another right which, insofar as the faithful are concerned, also belongs to the cleric: the right to one's own spirituality. From this point of view, as the *Directory on the*

8. Cf. G. FELICIANI, "I diritti fondamentali dei cristiani e l'esercizio dei *munera docendi et regendi*," in *Les droits fondamentaux du chrétien dans l'Eglise et dans la société* (Freiburg 1981), p. 237.

9. Cf. A. DE LA HERA, "El derecho de asociación de los clérigos y sus limitaciones," in *Ius Canonicum* 23 (1983), pp. 171–197.

10. Regarding the singularities of the right of association of permanent deacons, cf. CC, *Directory for the ministry and life of permanent deacons*, February 22, 1998, no. 11 (see commentary on c. 288).

Ministry and Life of Priests points out, "one must always respect, with deliberate care, the right of each diocesan priest to practice his own spiritual life in that way he deems most appropriate, always consistent with—as is obvious—the characteristics of his own vocation, as well as with the bonds emanating from it."[11]

11. CC, *Directory on the ministry and life of priests*, January 31, 1994, cit., no. 88.

279 **§ 1. Clerici studia sacra, recepto etiam sacerdotio, prosequantur, et solidam illam doctrinam, sacra Scriptura fundatam, a maioribus traditam et communiter ab Ecclesia receptam sectentur, uti documentis praesertim Conciliorum ac Romanorum Pontificum determinatur, devitantes profanas vocum novitates et falsi nominis scientiam**

§ 2. Sacerdotes, iuxta iuris praescripta, praelectiones pastorales post ordinationem sacerdotalem instituendas frequentent atque, statutis eodem iure temporibus, aliis quoque intersint praelectionibus, conventibus theologicis aut conferentiis, quibus ipsis praebeatur occasio pleniorem scientiarum sacrarum et methodorum pastoralium cognitionem acquirendi.

§ 3. Aliarum quoque scientiarum, earum praesertim quae cum sacris conectuntur, cognitionem prosequantur, quatenus praecipue administerium pastorale exercendum confert.

§ 1. Clerics are to continue their sacred studies even after ordination to the priesthood. They are to hold to that solid doctrine based on sacred Scripture which has been handed down by our forebears and which is generally received in the Church, as set out especially in the documents of the Councils and of the Roman Pontiffs. They are to avoid profane novelties and pseudo-science.

§ 2. Priests are to attend pastoral courses to be arranged for them after their ordination, in accordance with the provisions of particular law. At times determined by the same law, they are to attend other courses, theological meetings or conferences, which offer them an occasion to acquire further knowledge of the sacred sciences and of pastoral methods.

§ 3. They are also to seek a knowledge of other sciences, especially those linked to the sacred sciences, particularly in so far as they benefit the exercise of the pastoral ministry.

SOURCES: § 1: c. 129; PIUS PP. XII, Exhort. Ap. *Menti nostrae*, 26 sep. 1950 (*AAS* 42 [1950] 692–693); *CD* 16, 28; *PO* 19; *ES* I, 7; *SCCong* Litt. circ., 4 nov. 1969, 5 (*AAS* 62 [1970] 125)
§ 2: c. 131; *SCCong* Litt. circ., 4 nov. 1969, 16–25 (*AAS* 62 [1970] 130–134); *DPMB* 114
§ 3: *PO* 19; *DPMB* 114

CROSS REFERENCES: cc. 276, 278, 283 § 2, 555 § 2, 1°

COMMENTARY

Jorge de Otaduy

1. The title pertaining to sacred ministers has an initial chapter (cc. 232–264), in which the substantial contents of the right and duty of the Church to form clerics is explained in considerable breadth. Canon 279, which is now the subject of our commentary, formalizes the duty of those who are already ordained to continue their formation through the study of the sacred sciences and pastoral methods.

The permanent formation of clerics was the direct object of consideration of conciliar decrees *Christus Dominus* 16; *Presbyterorum ordinis* 19; and *Optatum totius* 22. In addition, several later documents were concerned specifically with this subject, among which can be singled out the letter *Inter ea*, of the SCCong, dated November 4, 1969.[1] *RFIS*, in turn, devoted numbers 100 and 101 to priestly formation following the seminary. To this list of documents is to now be added the *Directory on the Ministry and Life of Priests*, which points out in its extensive chapter III (nos. 69–97) the fundamental aspects of the subject which we are discussing here.[2]

The priestly ministry may be considered from the point of view of its generic nature, common to all other professions, and, in this sense, it demands a continual updating if one is to remain current and be effective. But human reasons are assumed and specified by supernatural reasons, which find support in the nature itself of the sacred ministry as a response to a vocation of God *in* the priesthood (cf. *PDV* 70). Continuing formation is faithfulness to the priestly ministry and the process of continual conversion.[3]

The gift of the Holy Spirit, which sustains the presbyter in this faithfulness, "calls on the priest to make use of his freedom in order to cooperate responsibly and accept permanent formation *as a task entrusted to him*" (*PDV* 70). This duty is not only an expression of his faithfulness to Christ, but also "an act of love for the people of God, in whose service the priest is placed. Indeed, an *act of true and proper justice*: The priest owes it to God's people, whose fundamental right to receive the word of God, the sacraments and the service of charity, the original and irreplaceable content of the priest's own pastoral ministry, he is called to acknowledge

1. *AAS* 62 (1970), pp. 123–134.
2. Cf. CC, *Directory on the ministry and life of priests*, January 31, 1994, cit.
3. Cf. SYNOD OF BISHOPS, ordinary general assembly, *The formation of priests in current circumstances*, *Propositio*, no. 31, cit. in *PDV*, 70.

and foster. Ongoing formation is necessary to ensure that the priest can properly respond to this right of the people of God" (*PDV* 70).[4]

2. Consonant with the above reasoning, c. 279 understands the intellectual formation of priests as a task aimed, first and foremost, at lending solidity to the principles of correct Catholic doctrine, more than treating questions of passing interest or debating school propositions.[5]

From this perspective derives the express mention of the traditional theological places, to which the cultivation of the true sacred science refers back. In the first place, the sacred scriptures, in whose assiduous and diligent study those who are concerned with the ministry of the Word should devote themselves, so that none may become "an empty preacher of the word of God to others, not being a hearer of the Word in his own heart" (*DV* 25). The tradition and magisterium of the councils and the Roman Pontiffs are mentioned next. It is urged, in regard to this last point, that "the documents of the Magisterium be explored in depth and shared in common, under an authorized guide, so that the unity of interpretation and of practice in diocesan pastoral work is thereby facilitated, which is of such benefit to the work of evangelization."[6]

The preceding should not be interpreted in the sense that permanent formation is to be reduced to a mere repetition of what is already known, but only that it should be guided towards a true enrichment of theological knowledge. So that it may achieve this end, in practice, specific norms about the ongoing formation of clerics indicate to the bishops the need that "one or more priests known for their learning and virtue shall be chosen as directors of studies to promote and direct pastoral lectures and other means considered necessary to encourage the scientific and pastoral formation of priests in the territory" (*ES* I, 7). To the extent possible, special courses should be organized to prepare those priests who are to be assigned to the formation and ongoing instruction of others, and with whom the bishop should maintain a close relationship.[7]

3. Although c. 279 focuses on the ongoing formation of clerics from the perspective of the obligation imposed on them, it cannot be doubted that performance of this duty implies, at the same time, the right of the cleric to have the appropriate means placed at his disposal.

According to the text of § 2 of this canon, it is incumbent upon the bishop to legislate on this subject. No significant change can be seen in regard to the previous discipline, insofar as the means, when considered in generic terms, are concerned, among which might be mentioned pastoral

4. Ibid.; also cf. CC, *Directory...*, cit., no. 69, referring to the right of the faithful to the "good formation" of priests.
5. CC, *Directory...*, cit., no. 77.
6. Ibid.
7. Cf. *Inter ea*, no. 13. Also cf. *Directory...*, cit., especially no. 90.

and other classes, theological meetings and conferences. Innovation can be found in the wide reference to particular law, in order to specify the manner and time for conducting these formational activities. The *Directory on the Ministry and Life of Priests* points out that the content of these encounters for study should be established according "to a precise curriculum of formation in the Diocese, which, if possible, should be updated every year."[8]

The specific norms on the permanent formation of the clergy offer as suggested guidelines—and using variable terminology[9]—the following instruments of formation:

a) advanced courses, established in particular for young priests, but different from the so-called *pastoral year*;[10]

b) courses of study held over short periods of time—for example, during one week a year or one day a month— or even given as distance learning, in connection with the faculties of ecclesiastical sciences;[11]

c) priestly meetings in small-sized groups, especially suitable for the discussion of pastoral classes;

d) libraries *(libris probatae doctrinae instructae)*, which the norm explicitly recommends;[12] and

e) vacation time to deepen theological, canonical or pastoral studies, more properly called by the *Directory on the Ministry and Life of Priests* sabbatical periods.[13]

The organization and development of the ongoing formation of clerics may be prudently entrusted by the bishop to faculties or theological and pastoral institutes, to the seminary, to entities or federations committed to priestly formation, or some other center or institute which, depending on their possibilities and opportunity, may be diocesan, regional, or national. "In any case, adherence to the demands of doctrinal orthodoxy, of fidelity to the Magisterium and to ecclesiastical discipline, to scientific competence, and to the suitable knowledge of real pastoral situations should be thus guaranteed."[14]

Consideration about the ongoing formation of clerics from the perspective of the law, as we have previously indicated, allows us to under-

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8. CC, *Directory...*, cit., no. 79.
9. Cf. *Inter ea*, nos. 19–25 and *Directory...*, cit., nos. 81–86.
10. Regarding the pastoral year as an important part of a priest's formation, cf. *Inter ea*, nos. 16–17 and *Directory...*, cit., no. 82.
11. Note the possibility of making this obligatory after a period of ten to fifteen years of the priesthood. Cf. *Inter ea*, no. 20.
12. Cf. *Inter ea*, no. 22.
13. Cf. CC, *Directory...*, cit., no. 83. One should consider the sabbatical period as neither a vacation nor a right. See c. 283.
14. CC, *Directory...*, cit., no. 81.

stand that the latter should be beyond any attempt at uniformity. The duty for oversight and fostering falls upon the competent authority, so that ecclesial communion is not broken, but without causing injury to the rights of the cleric. The cleric, from the aspect of his formation, enjoys legitimate spheres of autonomy that must be respected. In this sense, the canonical legislator suggests the encouragement of those institutions that will assist priests in their spiritual life, in their pastoral activities, and in particular—by virtue of the subject matter with which the document is concerned—in regard to those matters involving their intellectual formation.[15] Among those institutions, associations of clerics occupy a prominent place (cf. c. 278), one of whose traditional purposes has been, precisely, that of promoting ecclesiastical culture.

Pastoral prudence would advise the suitable accommodation of norms in cases of special situations. The *Directory*, in effect, places special attention on specific circumstances—youth, maturity, old age, spiritual crises—which must be taken into account when considering the ongoing formation of clerics.[16]

15. Cf. *Inter ea*, no. 25 and *Directory...*, cit., no. 88.
16. CC, *Directory...*, cit., nos. 93–97.

280 **Clericis valde commendatur quaedam vitae communis consuetudo; quae quidem, ubi viget, quantum fieri potest, servanda est.**

Some manner of common life is highly recommended to clerics; where it exists, it is as far as possible to be maintained.

SOURCES: c. 134; *PO* 8; *DPMB* 112

CROSS REFERENCES: cc. 275 § 1, 277, 278, 533 § 1, 550 §§ 1 et 2.

COMMENTARY

Jorge de Otaduy

1. Priestly fraternity has been enunciated, both in the *CIC* (c. 275 § 1) as well as in the magisterial texts of reference (*PO* 8), as a principle derived from sacramental ontology, but whose concrete operation is not specifically spelled out. The exercise of cooperation and mutual assistance is left to be freely determined by the clergy, under the action of the Holy Spirit, who fosters the good of the Church and the sanctification of the priests themselves.

However, there are two aspects pertaining to presbyteral communion that find specific reference in the *CIC*: association of clerics and a common life. The last point is the subject of the current c. 280.

2. The advantages of following this practice are clear: it fosters zeal and a spirit of charity among priests; it offers the faithful an admirable example of the detachment of the ministers of God from their own interests and from their own family; and, finally, it is testimony of the exquisite care with which those who practice the common life protect their priestly chastity.

The recommendation to priests for a common life is not an innovation in regard to the preceding discipline. Canon 134 of the *CIC*/1917, in effect, urged that it be introduced, and, where it was already in use, that it continue. References to subsequent pontifical magisterium may be multiplied.

Paul VI invited priests to form amongst themselves "a certain common life, entirely pointed towards the spiritual ministry, properly

speaking," as well as "the practice of frequent encounters, with a fraternal exchange of ideas, of plans and of experiences between brothers."[1]

A few years after the conclusion of Vatican Council II, the Synod of Bishops, which had met to reflect upon the priestly ministry, also manifested its desire that "a certain community of life or some type of shared living be fostered among the clergy."[2]

Under the terms used by the *CIC* and by the magisterial texts, in order to refer to the common life of presbyters, a clear intent to avoid expressions that can be traced back to the religious experience can be seen. Community of life, within the same house and under a common discipline, is a specific trait of religious institutes and could also be a trait of other institutes of consecrated life. It involves a way of common life, of a different nature than what is proposed for clerics, which, in the majority of cases, will not have any institutional form at all.

The reasonable general requisite that parish priests and vicars be housed within the parish—the parish priest, in the parochial house—near the church (cf. cc. 533 § 1, 550 §§ 1–2) may undergo some variation, with the appropriate permission of the ordinary (cf. cc. 533 § 1, 550 § 1) and on the condition that sufficient and effective provision be made for the performance of parochial tasks. The general requirement yields, above all, before the legitimate desire to reside in a common house of several presbyters (cf. ibid.). The requirement of the *CIC* has been explicitly explained recently by the *Directory on the Ministry and Life of Priests*: "It is to be wished—it is stated in this document—that parish priests be available in order to foster a common life in the parochial house with their vicars, who effectively organize their cooperation and participation in pastoral care; and, in turn, vicars are to recognize and respect the authority of the parish priest, for the purpose of constructing a priestly communion."[3]

The diverse forms of practicing a common life, as stated in the texts drawn from which c. 280 originates—common house, common table, common prayer, common recreation—respond to the diversity of situations in which clerics find themselves, as a result of their pastoral obligations.

During the year following ordination—called the pastoral year—it is especially recommended that some type of common life be practiced. "This period of formation may take place in a residence intended for this purpose (a house for clergy), or in a place that can constitute an exact and serene point of reference for all priests who are undergoing their first pastoral experiences."[4]

1. PAUL VI, Enc. *Sacerdotalis caelibatus*, no. 80.
2. *Documenta Synodi Episcoporum*, in *AAS* 63 (1971), p. 920.
3. CC, *Directory...*, January 31, 1994, cit., no. 29.
4. Ibid., no. 82.

281 **§ 1. Clerici, cum ministerio ecclesiastico se dedicant, remunerationem merentur quae suae condicioni congruat, ratione habite tum ipsius muneris naturae, tum locorum temporumque condicionum, quaque ipsi possint necessitatibus vitae suae necnon aequae retributioni eorum, quorum servitio, egent, providere.**

§ 2. Item providendum est ut gaudeant illa sociali adsistentia, qua eorum necessitatibus, si infirmate, invaliditate vel senectute laborent, apte prospiciatur.

§ 3. Diaconi uxorati, qui plene ministerio ecclesiastico sese devovent, remunerationem merentur qua sui suaeque familiae sustentationi providere valeant; qui vero ratione professionis civilis, quam exercent aut exercuerunt, remunerationem obtineant, ex perceptis inde reditibus sibi suaeque familiae necessitatibus consulant.

§ 1. Since clerics dedicate themselves to the ecclesiastical ministry, they deserve the remuneration that befits their condition, taking into account both the nature of their office and the conditions of time and place. *It is to be such that it provides for the necessities of their life* and for the just remuneration of those whose services they need.

§ 2. Suitable provision is likewise to be made for such social welfare as they may need in infirmity, sickness or old age.

§ 3. Married deacons who dedicate themselves full-time to the ecclesiastical ministry deserve remuneration sufficient to provide for the selves and their families. Those, however, who receive a remuneration by reason of a secular profession which they exercise or have exercised, are to see to their own and to their families' needs from that income.

SOURCES: § 1: *CD* 16; *PO* 17, 20; *ES* I, 4, 8; *UT* 921; *DPMB* 117
§ 2: *CD* 16; *PO* 21; *ES* I, 4, 8; *UT* 921
§ 3: *SDO* IV, 19–21

CROSS REFERENCES: cc. 191 § 2, 222, 230 § 1, 231 § 2, 263, 271, 274, 288, 418 § 2, 506 § 2, 1274, 1286

COMMENTARY

Jorge de Otaduy

1. Economic compensation for work, whenever it prevents other remunerated activities from being performed, is a personal natural right. In this sense, Vatican Council II repeated a principle that has been peacefully adopted throughout the entire history of the Church: "Completely devoted as they are to the service of God in the fulfillment of the office entrusted to them, priests are entitled to receive a just remuneration. For 'the laborer deserves his wages' (Lk 10:7), and 'the Lord commanded that they who proclaim the Gospel should get their living by the Gospel' (1 Cor 9:14)."[1]

The basis of this right is rooted in their status as a sacred minister, although it emerges immediately from the bond of incardination. However, the conciliar language, as well as that of the *CIC* itself, omits any reference to the term *ius* and prefers others, of a less obligatory appearance, such as *aequam recipiant remunerationem*, *remuneratio ab unoquoque percipienda*, or *remunerationem merentur*. On the other hand, the *CIC* does not find any difficulty in expressly recognizing that right—*ius habent ad honestam remunerationem*—on behalf of laypersons who, whether on a permanent or temporary basis, are devoted to the special service of the Church.[2]

No attempt is made to ignore a right that has, as we have just stated, a natural content. It should be emphasized that even when ministerial work normally presupposes remuneration, the latter does not constitute the compensation that applies to it. From the right to honorable sustenance, which incardinated clerics invoke, there follows a strict obligation of justice on the part of the competent authority, but its effective exercise, instead of being governed by the principles of commutative justice, is achieved through those principles that belong to distributive justice.[3]

Ecclesial service of clerics is a ministry, and not a profession. The juridical formalization of that relationship can only be achieved with difficulty—without producing its radical denaturalization—through the application of principles of strict contractual obligations. "The correlation between service and payment for such services," writes Bertone, "should put aside the fact that the ecclesiastical office is founded on an ecclesial

1. *PO* 20. Cf. CC, *Directory on the ministry and life of priests*, January 31, 1994, no. 67.
2. Cf. c. 231 §2. In particular, J. DE OTADUY, "El derecho a la retribución de los laicos al servicio de la Iglesia," in *Fidelium Iura* 2 (1992), pp. 187–206.
3. Cf. T. RINCÓN-PÉREZ, *Manual de Derecho canónico*, 2nd ed. (Pamplona 1991), p. 197.

vocation, and therefore cannot be placed under the protection of any work contract currently in effect in the civil community."[4]

2. The discipline currently in effect on the subject examined in this canon has undergone a transformation of profound scope as a consequence of the driving force of the Council. This reform does not reflect principles of economics, but instead obeys profound reasons which are theological and canonical in nature. There are fundamentally two reasons, connected by a mutual and close relationship: a change in the system of incardination of clerics and that of the system of benefices.

a) In the *CIC*/1917, the sustenance of clergy was directly linked to the so-called canonical title of ordination, this term being understood as the set of goods and wages through which that need was lawfully met. The ordinary title was that of benefice, while those of patrimony or pension were considered subsidiarily. Finally, the title of service to the diocese preserved its supplementary character. The institute of incardination was limited to fulfilling a disciplinary function, while the determination of service and sustenance were based on the title.

Development of the doctrine regarding the universal nature of the priesthood—according to which all presbyters are, through the sacrament of orders, ministers of Christ, and as a result, of the universal Church (cf. *PO* 10)—necessarily leads to a review of the norms on incardination. This came to be considered as a *relationship of ministerial service*—which expresses in concrete terms the universal designation involved in the reception of the sacrament of orders—and not as a simple disciplinary link of dependence upon a territory. In this sense, the title of ordination became unnecessary: the functions of service and sustenance which justified its existence are now immediately assumed by incardination.[5]

b) The following affirmation of *PO* 20 is thus understood—and this involves the second point pertaining to the discipline on economic matters towards which the Council indicated a profound renewal: "For this reason the so-called system of benefices is to be abandoned or else reformed in such a way that the part that has to do with the benefice—that is, the right to the revenues attached to the endowment of the office—shall be regarded as secondary and the principal emphasis in law given to the ecclesiastical office itself. This should in future be understood as any office conferred in a permanent fashion and to be exercised for a spiritual purpose."

4. T. BERTONE, "Obblighi e diritti dei chierici. Missione e spiritualità del presbitero nel nuovo codice," in *Lo stato giuridico dei ministri sacri nel nuovo Codex juris canonici* (Vatican City 1984), pp. 65–66.

5. Cf. T. RINCÓN-PÉREZ, "Sobre algunas cuestiones canónicas a la luz de la Exh. Apost. *Pastores dabo vobis*," in *Ius Canonicum* 65 (1993), pp. 341–342.

Consistent with the conciliar mandate, c. 1274 orders the creation of a special institute in each diocese to collect goods and offerings for the purpose of providing, in accordance with c. 281, for the support of the clergy who render service to the diocese. The aforementioned canon expressly states that all income shall be incorporated into this institute, and, to the extent possible, the same endowment of benefices, according to the provisions regulated under the particular law.

The duty to provide for the adequate sustenance of sacred ministers devolves radically upon the faithful who are beneficiaries of their service (c. 222). However, this affirmation becomes so generic as to say, within the sphere of the state, that citizens have the obligation to remunerate officials.[6] The subject upon which is imposed the obligation to support sacred ministers is, without doubt, the diocesan organization, or, more specifically, the juridical person which brings about incardination.

3. Two aspects pertaining to the remuneration of the clergy which have considerable juridical interest still remain to be discussed: determination of the subject of the law and the extent of the remuneration. Bear in mind that the general perspective of common law should be supplemented, in this regard, by norms set forth in particular law. In a similar manner, the norms of the state may be relevant—frequently in nature of a concordat—in regard to measures of economic cooperation with the Church.[7]

Canon 281 refers to the clergy *devoted to the ecclesiastical ministry.* The normal thing would be for priests to work with full devotion, in other words, with that essential and permanent availability to the orders of the diocesan bishop, which stems from priestly ordination itself and which takes priority before any other occupation of a non-pastoral nature which the priest might exercise.

There exists a close relationship between the right to remuneration and the duty to perform ecclesiastical ministries. It should be understood that the cleric who does not observe the obligation of availability, as formalized in c. 274, waives any right to remuneration. But if non-compliance or suspension of the duty of the ministry were due to causes beyond the will of the cleric, the right to remuneration would not cease for that reason.

The condition of clerics attached to other dioceses is governed, also in economic matters, by the provisions set forth in the written agreement that must be drawn up, as c. 271 requires.

The majority of married deacons are immersed in the common life of people and will normally earn a living from their own secular work. When-

6. This comparison is from C. GULLO, "Ministero sacerdotale e rapporto di lavoro," in *Il diritto di famiglia e delle persone* (1979), pp. 1158ff.

7. For the Spanish case, cf. *Acuerdo sobre asuntos económicos*, January 3, 1979.

ever they are invited to limit their secular profession activity in order to devote themselves to the ministry on a part-time basis, the bishop will provide for the economic support of their family, to the extent necessary. If a married deacon renders service on a full-time basis on behalf of the Church, he deserves, according to c. 281 § 3, remuneration that would be capable of supporting him and his family.[8]

The norms of common law are limited to establishing in a generic sense that the remuneration of the clergy shall be *appropriate to their state*, such that they may have a decent and respectable standard of living. It is incumbent upon the particular diocesan norms to set the amounts that priests are to earn. If the bishops' conference has determined in a binding manner some minimum basic amount on behalf of those who render their services on a full-time basis, the bishop naturally would be obligated to respect it. Supplementary amounts may be added to this base amount, needed in order for the sum to be consistent with the circumstances of each diocese and each priest.

Presbyterorum ordinis 20 suggests that the remuneration of priests be "fundamentally the same for all." However, it also takes into account given factors, such as the nature of the position or the circumstances of time and place, in order to avoid "an excess of egalitarianism which is not consistent with distributive justice, nor would it necessarily be an expression of Christian communication of goods."[9]

Some provisions under particular law indicate that priests who carry out their activities at non-diocesan institutions having a canonical mission shall receive their honorarium through the bishopric. An indiscriminate application of this norm may violate the freedom that the canonical system accords to sacred ministers on this subject, or it could also be unaware of situations that should be protected juridically.

If, within a given territory, such a norm were established in a general sense, it would have to consider, at least, the possibility of authorizing clerics to earn their remuneration directly from those institutions where they work, provided that there are specific reasons for their pastoral mission.

The canonical norms do not refer to the situation of clerics who perform secular jobs or professions. It is logical that non-ecclesiastical activities are governed by their own jurisdiction, and not by the canonical one, without detriment to the fact that the cleric, by virtue of his personal status, continues his dependence on his ordinary and could be required to have the due authorization whenever the law so establishes it.

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8. Regarding the right to the salary of permanent deacons those involved in labor matters, cf. CC, *Directory for the ministry and life of permanent deacons*, February 22, 1998, cit., nos. 15–20 (see commentary on c. 288).

9. T. RINCÓN, commentary to c. 281, in *Pamplona Com.*

4. In close connection with the right now under discussion, we find another one, in regard to social benefits, in the event of illness, disability or old age, as formalized in § 2 of this same c. 281. The precept gives us to understand that we are dealing with rights—economic compensation and social benefits—that rest on the same juridical foundation and pastoral motivation.

The effective exercise of this right demands the creation, by way of the language in c. 1274, of an institution which is to provide adequately for the social security of the clergy, whether it is diocesan or inter-diocesan in nature or created for an entire territory within an bishops' conference.[10] The free initiative of the ecclesiastical authority may seek supplementary formulas for insuring the clergy, in accordance with the real possibilities of action. John Paul II—cited by way of example—has created the John XXIII Foundation in the Vatican City, for the purpose of promoting religious assistance, both moral and material, for elderly priests, with particular reference to the pensioners of the Roman Curia.[11]

The same conclusion can be drawn from a literal exegesis of canonical norms regarding social benefits which have been mentioned here, obtained when dealing with the right to remuneration: the canonical legislator avoids the term *ius* and uses other expressions—*provideatur, fines obtineri possunt*—which seek to move away from the presumption of a strict subjective right that can be demanded from the ecclesiastical authority.

Although canon law has not expressly formulated the right of clerics to social protection, the *CIC* undeniably establishes the obligation of the Church to provide for those needs. At the same time, the duties that devolve upon the state in this regard should also not be overlooked. Clerics obviously do not lose their status as citizens, which is a sufficient title to collect certain social welfare benefits in the event of need. State intervention on this subject simply responds to the application of the principle of equality and non-discrimination of citizens, in this case on the basis of religious reasons, as recognized in democratic states.

10. Cf. *PO* 21.
11. Cf. *AAS* 80 (1988), p. 1619.

282 **§ 1. Clerici vitae simplicitatem colant et ab omnibus quae vanitatem sapiunt se abstineant.**

§ 2. Bona, quae occasione exercitii ecclesiastici officii ipsis obveniunt, quaeque supersunt, provisa ex eis honesta sustentatione et omnium officiorum proprii status adimpletione, ad bonum Ecclesiae operaque caritatis impendere velint.

§ 1. Clerics are to follow a simple way of life and avoid anything that smacks of worldliness.

§ 2. Goods which they receive on the occasion of the exercise of an ecclesiastical office, and which are over and above what is necessary for their worthy upkeep and the fulfillment of all the duties of their state, they may well wish to use for the good of the Church and for charitable works.

SOURCES: § 1: c. 138; *PO* 16, 17; *UT* 914, 917
§ 2: c. 1473; *PO* 17

CROSS REFERENCES: cc. 274, 281, 285 § 4, 286, 529 § 1, 1282

COMMENTARY

Jorge de Otaduy

1. The renunciation of earthly goods is a demand of Christ directed at all the faithful, which is to be practiced to the extent befitting the condition of each. Presbyters, while they do not assume poverty with a public promise,[1] "are invited to embrace voluntary poverty. By it, they become more clearly conformed to Christ" (*PO* 17).

In consonance with the spirit of poverty which should imbue priestly behavior, c. 282 imposes upon clerics the mandate of a simple life, which "should translate into a lack of interest in, and detachment from, money, in the renunciation of all eagerness for possessing earthly goods ... into the choice of a modest dwelling, to which all may gain access, into the rejection of everything that is, or even seems to be, luxurious, and into the growing tendency to offer free service to God and the faithful."[2]

1. Cf. CC, *Directory for the ministry and life of priests*, January 31, 1994, no. 26.
2. JOHN PAUL II, *General Audience*, July 21, 1993, in *L'Osservatore Romano*, Spanish ed., July 23, 1993, p. 3 (English edition: July 28, 1993, p. 11). Cf. *Directory...*, cit., no. 67.

Availability for the sacred ministry also makes the practice of detachment from earthly goods highly necessary, which is discussed, among others, in c. 274. Only poverty, in effect, assures the priest of his availability to be sent wherever his work may be most useful and urgent, even though it may entail personal sacrifice (cf. *PDV* 30). Or, to express it using the words of Vatican Council II, priests, "by using the world, then, as those who do not use it ... will come to that liberty by which they will be freed from all inordinate anxiety and will become docile to the divine voice in their daily life" (*PO* 17).

The secular status of clerics, everything else notwithstanding, implies that presbyters have earthly goods and that they use them. Moreover, the mandate for a simple life is established immediately after recognizing the right to remuneration for exercising ecclesiastical ministry. However, economic compensation for pastoral services does not exactly reflect the principle of balance between contractual services rendered within the framework of commutative justice (cf. commentary on c. 281). That concept, lawful and valid in civil society, could generate within the Church a mentality directed at demanding one's rights vehemently, completely foreign to the Gospels. Nor can the right stated in c. 281 be confused "with any kind of attempt to subject service to the Gospel and the Church to the advantages and interests that can derive from it" (*PDV* 30).

2. Paragraph 2 of c. 282 cleanly extracts the consequence of the principles which have just been formulated and which is this: the use on behalf of the good of the Church and for works of charity of what is over and above those goods which the clergy receive when exercising their ecclesiastical office, after they have provided for their own decent sustenance and fulfillment of all the obligations of their state.

We cannot speak, however, of a juridical bond at this point, since giving those goods that are left over—and the description itself of those goods as such—remains at the free discretion of the priest. On the other hand, administration of one's own economic resources falls within the scope of personal autonomy. The decision by means of which the cleric may choose an ecclesial end or works of charity in which he wishes to participate cannot be influenced by the urging of any outside authority, such as the bishop or the diocesan curia. It is necessary, therefore, to avoid those practices that might restrict the freedom of the clergy in regard to this point, as could be the case, for example, with the imposition of collecting honoraria through the bishopric whenever activities are carried out at non-diocesan institutions. It is appropriate to point out, along this same line, that uniformity in remuneration of all priests is not an unassailable principle and that justice may advise that both the nature of the office as well as the work actually performed by the priests be taken into account, for economic purposes.

One point of connection between priestly activity and earthly goods—which, in addition, directly implies the virtue of justice—is that pertaining to the administration of ecclesiastical goods. This must be done according to canonical norms and with the collaboration, to the extent possible, of lay experts. The clergy should always direct such goods towards those ends for whose attainment it is lawful in the Church to possess earthly goods—that is, on behalf of the organization of divine worship, to seek the decent sustenance of the clergy, and to undertake works of the apostolate or of charity, above all, on behalf of the poor (cf. *PO* 17).

The last recommendation that can be read in *PO* 17 is that which suggests that the clergy avoid all that might in any way distance the poor. Pastoral charity of priests should lean towards "the preferential choice for all forms of poverty—old and new—which tragically exist in our world"[3] and "will always bear in mind that the first misery from which man ought to be freed is sin, the ultimate root of all evils."[4]

3. CC, *Directory*..., Januray 31, 1994, cit., no. 67.
4. Ibid.

283 § 1. **Clerici, licet officium residentiale non habeant, a sua tamen dioecesi per notabile tempus iure particulari determinandum, sine licentia saltem praesumpta Ordinarii proprii, ne discedant.**

§ 2. **Ipsis autem competit ut debito et sufficienti quotannis gaudeant feriarum tempore, iure universali vel particulari determinato.**

§ 1. Clerics, even if they do not have a residential office, are not to be absent from their diocese for a considerable time, to be determined by particular Law, without the at least presumed permission of their proper Ordinary.

§ 2. They may, however, take a rightful and sufficient holiday every year, for the length of time determined by general or by particular Law.

SOURCES: § 1: c. 143; SCCouncil Litt. circ., 1 iul. 1926 (*AAS* 18 [1926] 312–313)
§ 2: *PO* 20

CROSS REFERENCES: cc. 265, 271, 395, 410, 533, 550, 1396

COMMENTARY

Jorge de Otaduy

1. Paragraph 1 of this canon maintains the duty that falls upon the clergy to reside within the diocese, traditionally imposed by the canonical system. Canon 143 of the *CIC*/1917, in terms very similar to those that are used in the present c. 283—but, as we will see, with a somewhat different foundation—established that "clerics, even if they do not have a residential office, are not to be absent from their diocese for a considerable time, to be determined by particular Law, without the at least presumed permission of their proper Ordinary."

The issue which is specifically discussed here appears to be currently influenced by new factors of a sociological type—such as the growing mobility which is demanded by work and social life—and, above all, of a juridical type. Among the latter, it is appropriate to refer to the creation of new canonical figures in which, fortunately, has crystallized the strong sensibility present today in the Church on behalf of a better distribution of the clergy. Such is the case, for example, of what has been called *aggregation*, regulated in c. 271, in order to facilitate the transfer of clergy to regions experiencing a grave shortage of priests, or also in regard to making

the process of incardination in a new diocese more flexible. A more detailed discussion of these subjects may be found in the commentary on the applicable canons.

Another juridical factor that may affect the current regulation of the duty of residence of the clergy is the new sense attributed to the institution of incardination as such. As is commonly known through the centuries, incardination was configured essentially as a bond of dependence within a territory. Continued residence in that place—meticulously regulated in the *CIC*/1917 by the so-called *law of residence*—came to be an assumption for exercising the duty of vigilance by the ordinary over the bond of incardination, while it simultaneously was the first consequence of the existence of that bond. At the current time, the duty of residence is truly an esteemed basis of incardination, the latter being understood as the relationship of full service to the diocese.

In this way, residence is not conceptually linked to the exercise of an office, but rather to belonging to the diocese. Although the cleric may not be discharging an office within the jurisdictional structure of where he belongs—a truly exceptional possibility, taking into account that promotion to sacred orders is related to ministerial service and that, furthermore, effective performance of that service is the most radical of rights of the ordained—he would also remain obligated by the mandate of residence. Incardination, as can be seen, still fulfills disciplinary objectives.

Even though the duty of residence is imposed on clerics in a general sense, there are specific precepts in regard to particular offices. This is the case in regard to the bishop (c. 395), the coadjutor and auxiliary bishop (c. 410), the parish priest (c. 533), and the parochial vicar (c. 550).

2. Turning back to c. 283, we notice that the prohibition against absence from the diocese without the permission of the ordinary refers to a departure over a *significant period of time*, which obviously exceeds an absence of several days. Setting the scope of an indeterminate concept that is introduced here is incumbent upon the particular law. When the *CIC*/1917 was in force, the authors disagreed about this point, holding varying opinions which ranged, in general, between one and three months (thus, for example, Chelodi and Maroto leaned towards the first position, and Vermeersch-Creusen towards the second). A favorable position towards extending this absence up to three months relied, as a point of reference, on the vacation period granted to holders of given offices. The result is that, based on the system currently in effect, the vacation period tends to be reduced to one month, from which it seems reasonable to conclude that this time span would constitute a *significant period of time*, for purposes of c. 283.

It must be kept in mind that grave non-fulfillment of the duty of residence could constitute an offense, according to the text of c. 1396.

In order to evaluate the legitimacy of the presumption of permission granted by the ordinary, when it is impossible to request it explicitly, prevailing custom would have to be observed, and, if applicable, requirements established by the diocesan authority.

As is obvious, absences on the part of the clergy, however justified and authorized they may be, should not alter the normal system of providing ministerial services, an issue which ought to be considered in the appropriate provisions of the particular law.

3. Paragraph 2 of c. 283 recognizes, on behalf of all the clergy—taking the words of *PO* 20 literally—the right to have a proper and sufficient vacation every year.

Universal law sets the time at one month for certain offices: diocesan bishops (c. 395 § 2), auxiliary and coadjutor bishops (c. 410), parish priests (c. 533 § 2), and parish vicars (c. 550 § 3).

It devolves upon particular law to set the vacation time for all remaining priests and upon the diocesan organization to prepare an adequate program of replacements.

Conceptually different from *vacation time* is the sabbatical period. The *Directory on the Ministry and Life of Priests* expressly indicates in this regard that "the danger of considering the sabbatical period as *vacation time* or the danger of claiming it as a right be carefully avoided."[1]

Sabbaticals are periods that are "more or less wide—in accord with actual possibilities—in order to be able to be with the Lord Jesus for a longer and more intense time, recovering strength and encouragement to continue along the path of sanctification ... Towards this end, monasteries, sanctuaries or other places of spirituality may play a marked role, for it to be possible to be away at large centers, leaving the presbyter free of direct pastoral responsibilities."[2]

The experience of dioceses that make use of these means is positive,[3] although effectively carrying them out, as can easily be understood, involves significant difficulties and may, in fact, become unfeasible in those areas that suffer from a greater shortage of presbyters.

Finally, the *Directory* recommends that the purpose of these periods be one of study or continuing education in the sacred sciences, while not forgetting the goal of spiritual and apostolic strengthening.[4]

1. CC, *Directory on the ministry and life of priests*, January 31, 1994, cit., no.83.
2. Ibid.
3. Ibid.
4. Cf. ibid.

284 Clerici decentem habitum ecclesiasticum, iuxta normas ab Episcoporum conferentia editas atque legitimas locorum consuetudines, deferant.

Clerics are to wear suitable ecclesiastical dress, in accordance with the norms established by the Bishops' Conference and legitimate local custom.

SOURCES: c. 136 § 1; *ES* I, 25 § 2d; SCCouncil Decr. *Prudentissimo sane* 28 iul. 1931 (*AAS* 23 [1931] 336–337); SCSUS Monitum, 20 iul. 1949

CROSS REFERENCES: cc. 285 §§ 1 et 2, 929

COMMENTARY

Jorge de Otaduy

1. The universal law formulated in this canon refers to the wearing of ecclesiastical dress in the common relations of social life, not during liturgical celebrations—an issue that is specifically discussed in other norms[1]—or, to put it in more general terms, within the scope of the pastoral ministry.

The *CIC*, however, does not impose on all clerics a uniform dress code, but only entrusts the particular norm of the bishops' conferences, in accordance with legitimate local customs, which are to determine the *type* of ecclesiastical dress, which is to be used within the scope of the territory under its competence.

The use of a distinctive sign contributes, on one hand, to the decorum of the priest in his outward behavior or in the exercise of his ministry, but it serves, above all, as a manifestation within the heart of the ecclesiastical community of the public testimony that all priests should give of their own identity and of the fact that they belong especially to God.[2]

1. Cf. c. 929, regarding the use of sacred vestments prescribed by the rubrics to celebrate and administer the Eucharist; the prescribed vestments for each celebration are described in nos. 297 to 310 of the GIRM.

2. Cf. PAUL VI, Address to the clergy February 17, 1969, in *AAS* 61 (1969), p. 190; February 17, 1972, in *AAS* 64 (1972), p. 223; February 10, 1978, in *AAS* 70 (1978), p. 191; JOHN PAUL II, Letter *Novo incipiente*, April 7, 1979, in *AAS* 71 (1979), pp. 403–405; "Address to the clergy" November 9, 1978, in *Insegnamenti* 1 (1978), p. 116; April 19, 1979, in *Insegnamenti* 2 (1979), p. 929.

The message of the Gospels that the clergy are called to transmit is expressed with words and also in external signs, especially important in today's world, so sensitive to the language of images. "In the present society," John Paul II has written, "in which the sense of the sacred has become so terrifyingly diminished, people have even more need of those calls to God, which cannot be disregarded without a certain impoverishment of our priestly service."[3]

2. The subjects obligated by the universal norm are the clergy, with the exception of permanent deacons, by virtue of c. 288 and provided that the particular law does not establish otherwise. However, as is obvious, the latter should also adhere to the provisions about the way of dressing for liturgical celebrations, during the administration of the sacraments and when preaching.

If the particular norm were to limit the scope of the mandate only to priests, it would not be interpreting correctly the text of the Code, which refers generally to *clerics*.

In general, the bishops' conferences have established the use of the cassock or that of the *clergyman*. In a comprehensive vision that was much to the point, Martín de Agar reports that some decrees of the bishops' conferences require, in effect, such details as the color, the Roman collar (Puerto Rico, Dominican Republic), reasons for this prescription (Argentina, Ireland), or the warning that ecclesiastical dress does not release one from wearing the vestments prescribed for ceremonies (Ecuador, Colombia).

In some countries, the use of another type of garment or of ecclesial signs is permitted, such as the dress—dignified, serious, dark-colored—with the cross as a sign of clerical status (Philippines, Ecuador, Colombia, Scandinavia, Uruguay). At times, religious clerics have also been taken into account, by proscribing the habit of their own institute (Venezuela, Ecuador).

The force and the tone prescribed by the discipline of ecclesiastical dress are very diverse: from the clearly imperative, typical of legal language, to the merely exhortative or persuasive. It should not be forgotten, even so, that the competence attributed by canon 284 to bishops' conferences is that of establishing the *type* of dress that is considered appropriate for a cleric in that particular place, not the obligation to wear it, which has been established in this canon.[4]

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3. John Paul II, "Letter to the Vicar of Rome," September 8, 1982, in *L'Osservatore Romano*, October 18–19, 1982.

4. Cf. J.T. Martín de Agar, *Legislazione delle Conferenze episcopali complementare al CIC* (Milan 1990), p. 8. (Editor's Note: For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.)

Article 66 of the *Directory on the Ministry and Life of priests* of January 31, 1994, addresses the question of ecclesiastical attire. (i) It refers to recent pontifical magisterial teachings and reviews the doctrinal basis and pastoral reasons for the use of ecclesiastical garb by sacred ministers, as prescribed by c. 284. (ii) It stipulates the manner of effectuating the universal law: "The attire, when it is not a cassock, must be different from the manner in which the laity dress, and conform to the dignity and sacredness of his ministry. The style and color should be established by the Bishops' conference, always in agreement with the dispositions of the universal law." In order to reinforce the importance of adhering to these criteria, the article categorically states, "Because of their incoherence with the spirit of this discipline, contrary practices cannot be considered legitimate customs, and should be removed by the competent authority."

A *Clarification* of the PCILT dated October 22, 1994 has stated that general decrees of bishops' conferences issued as norms complementary to universal law (in this case, c. 284) must be interpreted in a manner consistent with any instructions or explanations by the same supreme authority that promulgated the *CIC*. The *Clarification* adds, "In accordance with what is prescribed in canon 32, these dispositions of article 66 of the *Directory* obligate all those who are called to observe the universal norm of canon 284, whether Bishops or priests, not however permanent deacons (cf. c. 288). Diocesan Bishops, moreover, are the competent authority to require obedience to such discipline and to remove any customs contrary to the use of ecclesiastical dress (cf. c. 392 § 2). The bishops' conferences have the task of facilitating each of the diocesan Bishops in carrying out their duty."[5]

The *Directory* itself concludes by stating, "Aside from exceptional situations, the failure to wear ecclesiastical dress on the part of the cleric may belie a weak sense of the singular identity of the pastor who is completely devoted to the service of the Church."[6]

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5. *Clarification* of the PCILT, October 22, 1994, in *Sacrum Ministerium,* 1995, pp. 263-273. With respect to the juridical status of the provisions of the Directory that establish the manner of executing universal laws (and particularly art. 66), the *Clarification* declares that they are in the category of general executory decrees (cf. c. 32 CIC).

6. CC, *Directory...* cit., no. 66; Cf. PAUL VI, "General Audience," September 17, 1969, in *Insegnamenti* 7 (1969), p. 1065; "Address to the clergy," March 1, 1973, in *Insegnamenti* 11 (1973), p. 176.

285 **§ 1. Clerici ab iis omnibus, quae statum suum dedecent, prorsus abstineant, iuxta iuris particularispraescripta.**

§ 2. Ea quae, licet non indecora, a clericali tamen statu aliena sunt, clerici vitent.

§ 3. Officia publica, quae participationem in exercitio civilis potestatis secumferunt, clerici asssumere vetantur.

§ 4. Sine licentia sui Ordinarii, ne ineant gestiones bonorum ad laicos pertinentium aut officia saecularia, quae secum feruntonus redendarum rationum; a fideiubendo, etiam de bonis propriis, inconsulto proprio Ordinario, prohibentur; item a subscribendis syngraphis, quibus nempe obligatio solvendae pecuniae, nulla definita causa, subscipitur, abstineant.

§ 1. Clerics are to shun completely everything that is unbecoming to their state, in accordance with particular Law.

§ 2. Clerics are to avoid whatever is foreign to their state, even when it is not unseemly.

§ 3. Clerics are forbidden to assume public office whenever it means sharing in the exercise of civil power.

§ 4. Without the permission of their Ordinary, they may not undertake the administration of goods belonging to lay people, or secular offices involving the obligation to render an account. They are forbidden to act as surety, even with their own goods, without consulting their proper Ordinary. They are not to sign promissory notes involving the payment of money but do not state the reason for the payment.

SOURCES: § 1: c. 140; SCCouncil Litt. circ., 1 iul. 1926 (*AAS* 18 [1926] 312–313); SCHO Decr. *Suprema Sacra Congregatio*, 26 mar. 1942 (*AAS* 34 [1942] 148)
§ 2: c. 139 § 1
§ 3: c. 139 § 2; SCCouncil Resp., 15 mar. 1927 (*AAS* 19 [1927] 138); SCCouncil Decr. *Cum activa*, 16 iul. 1957 (*AAS* 49 [1957] 635), SCCouncil *Notif.*, 15 feb. 1958 (*AAS* 50 [1958] 116); *UT* Passim; IOANNES PAULUS PP. II, Let. *Magnus dies*, 8 apr. 1979, 7 (*AAS* 71 [1979] 404)
§ 4: c. 139 § 3

CROSS REFERENCES: cc. 227, 286, 287, 288, 289, 1399

COMMENTARY

Jorge de Otaduy

1. The preceding canons (273–284) contain the fundamental positive prescriptions that determine the form of the particular lifestyle that belongs to sacred ministers. The following canons (cc. 285, 286, 287 and 289) group together the primary prohibitions affecting clerical conduct.

Knowledge acquired through negative means may result on many occasions particularly suitable—also within the juridical sphere—in order to understand the reality that is the object of study. While the value proposed by the positive norm may be achieved through a plurality of behaviors whose exhaustive consideration ordinarily escapes the interpreter of the law, the prohibitive norm indicates a concrete negative value which emerges, without any doubt whatsoever, as a boundary that cannot be crossed by just behavior. In this sense, prohibitions or negative recommendations fulfill an important mission, insofar as the establishment of the statute of sacred ministers is concerned.

Behaviors that are prohibited to clerics are understood as those proper to the laity. Such negative mandates attempt to forestall the tendency, always present, towards the *laicization* of the sacred ministry. As John Paul II has recalled, "our task is that of serving truth and justice within the dimensions of *human temporality*, but always from within a perspective which should be that of eternal salvation."[1]

The variety of prohibitions outlined in these canons may find a systematic context—beyond their precise legal position, not always well justified—within a wider framework of reference consisting of the following spheres:

a) *economic* (cc. 285 § 4 and 286);

b) *political* (cc. 285 § 3 and 287);

c) *military* (cc. 289 § 1);

d) *social* (cc. 285 §§ 1 and 2).

The exegetical nature of these commentaries makes it advisable, however, that the legal order be closely adhered to, even though it may at times lead to a fragmentary treatment of these matters.

1. JOHN PAUL II, Letter *Novo incipiente*, April 8, 1979, no. 7, in *AAS* 71 (1979), p. 404; also cf. *Discurso al clero de Roma*, November 9, 1978, no. 3, in *L'Osservatore Romano*, Spanish ed., November 19, 1978, p. 11. (English edition: "Pope John Paul II to the Roman Clergy," November 9, 1978, no. 3, in *L'Osservatore Romano*, November 16, 1978, p. 3.)

2. The first references in c. 285, §§ 1 and 2, are directed towards prohibitions of a *social order*: those behaviours that *detract from* or *are foreign to* the clerical state.

In contrast to the remaining assumptions in which the type of reprehensible activity is indicated specifically, in these cases the reference is generic and, in a certain sense, residual. The wide degree of unseemly or foreign behaviors refers to all those that are judged to be inappropriate for the clergy and that are not specifically considered under other legal norms.

Unseemly behavior detracts from the clerical state; in other words, it is contrary to the dignity and social reputation that the sacred ministry deserves. The *CIC*/1917 mentioned, by way of example, the practice of games of chance or of hunting, bearing arms, frequenting bars or attending performances, dances and parties.

The spirit of the norm is preserved in all its strength, even though the *CIC* refers back to the prescriptions imposed by particular law as to the determination of behaviors to be rejected. It is reasonable to suppose, in effect, that particular norms will adapt better to the changing circumstances of culture, place and time. The canon, however, does not require bishops' conferences to hand down the applicable norms, as occurs with cc. 276 and 284. The promulgation of such norms remains, therefore, at the free discretion of the competent authority, which, on occasion, will not necessarily be the bishops' conference, but each bishop in his own diocese.

Deeper immersion in the mystery of the Church carried out by Vatican Council II, has powerfully contributed to the development of a theology of the priesthood as well as a theology of the laity, and, as a result, the specification of the role and functions incumbent on each within the people of God.

An adequate understanding of the ontology of the ministerial priesthood and its sacred purpose naturally leads to the perception of what could be unbecoming to the specific status of the clergy. At the same time, "The more the laity's own sense of vocation is deepened, the more what is proper to the priest stands out" (*PDV* 3).

In view of the undesirable ways in which the clergy can become involved in the secular sphere, the law recognizes the competence of the laity in order to act in that sphere, "handling and ordering temporal affairs according to God," and it establishes the participation of clerics in secular offices as entirely out of the ordinary.

On the other hand, nothing prevents the universal or particular legislator from referring specifically to given behaviors in order to declare them to be foreign to the priestly state. Such was the case when religious and clerics were prohibited from exercising the office of psychoanalyst,

ad mentem c. 139 of the *CIC*/1917, currently in effect at that time, and through *monitum* dated July 15, 1961, handed down by the SCHO.

3. Paragraph 3 of c. 285 prohibits the clergy from participating in the exercise of civil power. This norm, as it has been so aptly written, "finds its justification in doctrine in the same ontology of the ministerial priesthood"[2] and, as a result, in the mission itself of the sacred ministers, consecrated by a particular sacrament and sent to be "dispensers of the mysteries of God" (1 Cor 4:1), "to preach the Gospel and shepherd the faithful as well as to celebrate divine worship as true priests of the New Testament" (*LG* 28).

Three points are worthy of emphasis in the commentary on this norm:

a) It is about a *universal law*. It imposes an obligation, therefore, on all priests of the Latin Church, secular and religious alike, whatever the personal and social circumstances are in which they live and exercise their ministry.

b) The prohibition is extended to the exercise of civil power in all its forms: executive, legislative and judicial.

c) In addition to containing relevant moral content, c. 285 § 3 gives shape to a true norm of imperative law, which goes well beyond simple advice or recommendation. This can be inferred, without doubt, from the quality of the tone of the prohibition and from the absence of consideration of the possibility of seeking permission to act otherwise.

The fact that the norm does not penalize the opposing behavior as offensive is not fully consistent with the preceding statement, even more so, if it is kept in mind that other prohibitions imposed with less insistence—that of exercising negotiations or business, for example—do indeed constitute offenses.

All the same, violation of the norm in c. 285 § 3 may give rise to penal sanctions through the singular precept, and also whenever it is believed, according to c. 1399, that the specific gravity of the offense requires it and that scandals need to be prevented or repaired.

4. Paragraph 4 contains various prohibitions on the economic level. The *Directory on the Ministry and Life of Priests* of 1994 resolutely establishes, in turn, that the priest "shall abstain from profit-making activities unbecoming to his ministry."[3]

Engaging in activities of this type is inconsistent with the spiritual nature of the sacred ministry. Similarly, it is not edifying to the faithful, since it involves excessive zeal for temporal goods, and it presupposes

2. T. RINCÓN-PÉREZ, commentary on c. 285, in *Pamplona Com.*
3. CC, *Directory on the ministry and life of priests*, January 31, 1994, no. 67.

that certain economic risks will be assumed, which, on occasion, may even affect ecclesiastical goods.

a) Clerics are prohibited from administering the goods of the laity, either through the management of estates belonging to private individuals or by holding positions in companies or civil societies or in public administration. The requirement that acts of administration entail the rendering of accounts seems to demand a certain habitual behavior, which leaves occasional acts rendered by way of friendship or on an emergency basis, in order to avoid financial harm, beyond the scope of the norm. If the activity performed could be classified as true professional services, the prohibition would more than likely fall under the application of c. 286.

The permission of the ordinary would naturally be appropriate, in order to act in the opposite sense, whenever there is a reasonable and urgent reason for doing so. Normally, it would be on a temporary basis until the situation of risk that had triggered the intervention is resolved or a favorable settlement of the business is reached.

The prohibition does not extend to the management of one's own estate, a matter which falls under the scope of private autonomy of the cleric, provided that it does not become a professional activity, incompatible with the mandate of c. 286.

b) The prohibition imposed on clerics against acting as surety, even with their own goods, is established to a lesser degree than the latter. It is sufficient to consult one's own ordinary before making the pertinent decision.

Surety is a contract by means of which one pledges to pay or fulfill an obligation on behalf of a third party, in the event that the latter fails to do so. Included within the scope of behavior prohibited in this canon is the issuance of an endorsement through which payment of a promissory note is guaranteed.

The risk for the ecclesiastical patrimony does not exist in these cases, which is primarily what justifies the intervention of the ecclesiastical authority. Thus, the latter maintains solely an indirect interest in the transaction, by virtue of the principle according to which he is responsible for watching over the decent sustenance of the cleric, but he at least deserves to be heard.

c) Paragraph 4 of c. 285 ends with the mandate to abstain from signing documents in which the obligation to pay an amount of money is assumed without specifying the cause. It constitutes a measure directed at limiting the risks to the ecclesiastical patrimony, thereby demanding cautionary behavior on the part of its administrators.

286 Prohibentur clerici per se vel per alios, sive in propriam sive in aliorum utilitatem, negotiationem aut mercaturam exercere, nisi de licentia legitimae auctoritatis ecclesiasticae.

Clerics are forbidden to practise commerce or trade, either personally or through another, for their own or another's benefit, except with the permission of the lawful ecclesiastical authority.

SOURCES: c. 142; SCconc Decr. *Plurimis ex documentis*, 22 mar. 1950 (*AAS* 42 [1950] 330–331)

CROSS REFERENCES: cc. 285, 288, 1392

COMMENTARY

Jorge de Otaduy

1. *Commerce* is the generic term, while *trade* is the specific term. The latter term is applicable, within the scope of economic relations, to transactions of exchange or trade. It designates something more than the pure fact of purchase or sale, being used to designate all kinds of acts as a middleman, which offer as a final result the placing of articles at the disposal of those demanding them.

The typical characteristics describing the activity of commerce can be indicated in the following four ways: a) acting as an intermediary between producers and consumers; *b)* acting as an intermediary through exchange; c) a habitual exchange , where it rises to the level of professional status; and d) profit-making intent.

There are multiple classifications under which this activity might fall. In considering the subject of such transactions, it is appropriate to single out the commerce in goods, money and articles. In the first case, if resale is sought in the same manner, then it involves purely commercial activity; if a certain trade occurs through work, it would then be classified as industrial commerce.

2. The *Directory on the Ministry and Life of Priests* recalls once again that the priest is to use goods "with a sense of responsibility, correct intent, moderation and detachment ... and, through this, shall abstain from profit-making activities unbecoming to his ministry."[1]

1. CC, *Directory on the ministry and life of priests* January 31, 1994, no. 67.

For such activities to become subject to prohibition under this canon, it is imperative that, on one hand, *profit-making intent* be present, this being understood as that which seeks something more than the normal preservation of one's own patrimony; and, on the other, *habitual*, the performance of occasional economic activities not being sufficient to represent prohibited behavior. It is necessary that those practices would transform the cleric into a businessman, in the opinion of prudent and disinterested persons.

Investment in the stock exchange of one's own personal patrimony does not fall within the scope of what is prohibited under this canon, because such transactions, according to the common judgment of people, are not considered a business as long as they do not constitute a professional activity.

The prohibition against doing business affects clerics, either personally or through others. The essential reasons which advise against such practices continue to be fully valid, even if the collaboration of intermediaries is sought, in order to avoid, as far as possible, the negative effects which ordinarily arise from such behavior on a pastoral level. Similarly, the canon warns us that a good end—*the benefit of third parties*—does not justify engaging in commercial activities.

3. Permission of a legitimate ecclesiastical authority is possible. It is possible to imagine, for example, the case of the complete lack of resources in order to subsist by other means. By virtue of the wide faculties conferred under c. 87 to the diocesan bishop on the subject of dispensations, it would be the latter who would grant the appropriate authorization.

Violation of this norm is the basis of a offense defined under c. 1392, and is punishable with an indeterminate penalty.

This canon modifies the regulations introduced by decree of the SC-Council, dated March 22, 1950, which imposed the penalty of excommunication *latae sententiae*, reserved in a special way to the Apostolic See, and in the most serious cases, the penalty of degradation, imposed on clerics who violated this norm.

287 **§ 1. Clerici pacem et concordiam iustitia innixam inter homines servandam quam maxime semper foveant.**

§ 2. In factionibus politicis atque in regendis consociationibus syndicalibus activam partem ne habeant, nisi iudicio competentis auctoritatis ecclesiasticae, Ecclesiae iura tuenda aut bonumcommune promovendum id requirant.

§ 1. Clerics are always to do their utmost to foster among people peace and harmony based on justice.

§ 2. They are not to play an active role in political parties or in directing trade unions unless, in the judgment of the competent ecclesiastical authority, this is required for the defense of the rights of the Church or to promote the common good.

SOURCES: § 1: *PO* 6; *GS* 91–93; *UT* 912–913; Syn. Bish. *Convenientes ex universo*, 30 nov. 1971 (*AAS* 63 [1971] 932–937)
§ 2: CodCom Resp. I, 2–3 iun. 1918 (*AAS* 10 [1918] 344); BENEDICTUS PP. XV, Let., 12 mar. 1919 (*AAS* 11 [1919] 122–123); Secr. St. Let., 2 oct. 1922; SCR Litt. circ., 10 feb. 1924; SCconc Resp., 15 mar. 1927 (*AAS* 19 [1927] 138); *UT* 912–913

CROSS REFERENCES: cc. 227, 278, 285, 768

COMMENTARY

Jorge de Otaduy

1. Paragraph 1 of the canon establishes the positive and generic duty of clerics to foster the preservation of peace and harmony among people. This should be particularly true within the Church, logically enough, where priests should appear as men of peace, communion and dialogue (cf. *PDV* 18). "Theirs is the task, then, of bringing about agreement among divergent outlooks—Vatican Council II teaches—in such a way that nobody may feel a stranger in the Christian community. They are to be at once the defenders of the common good, for which they are responsible in the bishop's name; and at the same time the unwavering champions of truth lest the faithful be carried about with every wind of doctrine as recommended by St. Paul (cf. Eph 4:14)" (*PO* 9).

The mission of establishing relations of brotherhood and service with people is extended to brothers and sisters of other churches and Christian denominations, to the faithful of other religions, to people of

good will, in a special way to the poor and weakest, and to all those who seek, even without knowing or saying it, the truth and salvation of Christ (cf. *PDV* 18).

The object of the promotion of peace as stated in the *CIC* is to be precisely that which is founded in justice. This means, therefore, that the cleric is responsible "to do everything possible in defense of the rights of the human being whenever such rights respond to true demands of natural or positive justice."[1]

Certainly, "Christ did not bequeath to the Church a mission in the political, economic, or social order: the purpose he assigned to it was a religious one. But this religious mission can be the source of commitment, direction, and vigor to establish and consolidate the community of people according to the law of God" (*GS* 42). Those interventions of the clergy in such subjects as, for example, the dignity and freedom of the human person, the obligations which pertain to human beings united in society or the manner in which to order temporal affairs, according to the plan established by God (cf. c. 768), would not be classified as *political interference,* if the motive inspiring them were truly "to help the laity form their own correct conscience."[2]

2. In contrast with the generic formulation of the paragraph we have just commented on, the second paragraph contains a negatively formulated duty in very precise terms: this involves a prohibition directed at the clergy against actively participating in politics and the management of union affairs. The firm position of the Church on this point responds to a deep conviction that it, "because of its universality and catholic nature, cannot bind itself to the contingencies of history."[3] As a result, the state of freedom, fruit of the separation from active politics, "highly suits the priest, who is the spokesman of Christ when he proclaims human redemption and his ministry when he applies its fruits in all fields and levels of life."[4] Political and union activities are good things in themselves, but "they are foreign to the clerical state, since they could come to constitute a grave danger of rupture of ecclesial communion."[5]

By virtue of the service that he must render to individuals and society, the presbyter cannot fail to be interested in all those questions relative to public administration, which inevitably entail an ethical dimension. The priest, in addition, preserves the right to have a personal political opinion and to exercise his right to vote, according to his conscience. "In those cir-

1. T. RINCÓN-PÉREZ, commentary on c. 287, in *Pamplona Com.*
2. SYNOD OF BISHOPS, 1971, in *L'Osservatore Romano,* Spanish ed., December 12, 1971, p. 4.
3. CC, *Directory on the ministry and life of priests,* January 31, 1994, cit., no. 33.
4. JOHN PAUL II, *General Audience,* July 28, 1993, in *L'Osservatore Romano,* Spanish ed., July 30, 1993, p. 3 (English edition: August 11, 1993, p. 7).
5. CC, *Directory...,* cit., no. 33.

cumstances in which diverse political, social or economic choices legitimately present themselves," pointed out the Synod of Bishops in 1971, "presbyters, like all citizens, have the right to make their own choices."[6]

This is not—as no right is—an unlimited right. The external manifestation of personal political preferences may be reasonably restricted by the demands of a pastoral ministry which seeks to reach everyone, to proclaim the Gospels in their fullness, and to be a valid sign of unity among all people. In addition, "within the framework of the Christian community, it should have respect for the maturity of the laity and, what is more, should strive to assist them to achieve this, through the formation of conscience."[7] In any event, he should avoid displaying his own opinion as the sole legitimate one, considering, in accordance with magisterial teachings, that "political choices are contingent by nature and do not express the Gospels, completely, adequately or perennially"[8]; that "a political party," as John Paul II adds, along this same line of thought, "can never be identified with the truth of the Gospel, nor could it ever be, therefore, the object of absolute allegiance, unlike what happens with the Gospel."[9]

As a logical consequence, "the presbyter, witness of future things, should keep a certain distance from any political position or effort."[10] He should keep in mind that relative aspect of political activities "even when citizens of Christian faith create, in a plausible way, parties inspired expressly in the Gospels, and he should not cease to strive to make the light of Christ also shine on other parties and social groups."[11]

3. The juridical norm extends the scope of this prohibition to *active participation* in political parties. I understand that this does not only consist of exercising management functions; it should also include membership, whose simple knowledge is susceptible to triggering the rejection that this canonical prohibition seeks precisely to stop. The treatment that warrants the participation of the clergy in union associations is something very different. What is forbidden in this hypothetical situation is, strictly speaking, participation on an active basis in *maintaining* those organizations.

"Presbyters who, in the generosity of their service to the evangelical ideal," John Paul II teaches us, "feel the tendency towards immersing themselves in political activity, in order to contribute more effectively to healing political life, by eliminating injustices, exploitation and oppressions of all kinds, are reminded by the Church that, along that road, it is

6. SYNOD OF BISHOPS, 1971, in *L'Osservatore Romano*, Spanish ed., December 12, 1971, p. 4.
7. JOHN PAUL II, *General Audience*, July 28, 1993, cit.
8. SYNOD OF BISHOPS, 1971, cit.
9. JOHN PAUL II, *General Audience*, July 28, 1993, cit.
10. SYNOD OF BISHOPS, 1971, cit.
11. JOHN PAUL II, *General Audience*, July 28, 1993, cit.

easy to see oneself involved in party struggles, running the risk of collaborating, not in the birth of a just world, to which we all aspire, but rather, to new and worse forms of exploitation of poor people. They should know, in any case, that they do not have the mission or the charism from on high for that endeavor in political action and participation."[12] It is also appropriate to recall, in the words of the *Directory on the Ministry and Life of Priests*, that reducing the priestly mission "to temporal tasks—purely social or political, and outside, in any case, their own identity—is not a conquest, but a very grave loss for the evangelical fruitfulness of the entire Church."[13]

4. Whenever defense of the rights of the Church or the promotion of the common good thus demands it—adds the canon which is now the subject of our commentary—that prohibition could be removed on a very exceptional basis. It is important to point out, in all regards, that evaluation of circumstances justifying participation in politics does not rest with the personal judgment of the cleric, but rather falls upon the ecclesiastical authority. Specifically, it would require the consent of the bishop, after having consulted the presbyteral council and also, if the case so requires it, the bishops' conference.[14] This involves a basic measure of prudence, intended to avoid dangerous temptations that could easily take shape in the heat of political passion.

12. Ibid.
13. CC, *Directory...*, cit., no. 33.
14. Cf. SYNOD OF BISHOPS, 1971, cit.

288 **Diaconi permanentes praescriptis cann. 284, 285 §§ 3 et 4, 286, 287 § 2 non tenentur, nisi ius particulare aliud statuat.**

Permanent deacons are not bound by the provisions of Cann. 284, 285 §§ 3 and 4, 286, 287 § 2, unless particular Law states otherwise.

SOURCES: *SDO* 17, 31

CROSS REFERENCES: cc. 276 §§ 2 et 3, 281, 284, 285 §§ 3 et 4, 286, 287 § 2, 1031 §§ 2 et 3, 1032 § 3

COMMENTARY

Jorge de Otaduy

1. The diaconate constitutes the lowest level in the Church hierarchy. It does not confer hierarchical priesthood, but instead, is directed to certain ministries related to the presbyterate and the episcopate (*LG* 29). "Bishops, priests, and deacons are not grouped together in one category or type by reason of their powers and functions," indicates Hervada, "but in relation to the fundamental aspects of their personal statute."[1]

The sacrament of orders, in effect, produces personal consecration and commitment to *negotia ecclesiastica*, which entails a special lifestyle. The special statute of clerics established under cc. 273ff, is thus applicable, in principle, to deacons. Submission to this statute is complete in the case of deacons headed towards the presbyterate. The personal system of governance of permanent deacons—whether the latter are young or of a mature age, whether celibate or married—may find certain exceptions, always along the essential lines of the clerical statute.[2] These principles

1. J. HERVADA, commentary to c. 207, in *Pamplona Com.*

2. As we know, disciplinarian reform with regard to the diaconate and the re-establishment of the permanent diaconate in the Latin Church had taken place by means of the *SDO*. In Spain, the Bishops' conference, in its XXVII Plenary Assembly (November 21–26, 1977), approved the "Practical norms for the re-establishment of the permanent Diaconate in Spain," ratified in art. 1,1 of the first General Decree of the Conference. Cf. *BOCEE* 3 (1984), p. 99. The mentioned norms are published in Annex I of that Decree, pp. 105–110. (Editor's Note: For complementary norms promulgated by English language Conferences of Bishops, see Volume V, Appendix 3.)

have recently been reiterated in the *Directory for the Ministry and Life of Permanent Deacons*, February 22, 1998, no. 6.[3]

It is interesting to observe, in this regard, the close affinity existing between the norms of chapter VI of *Sacrum diaconatus ordinem* and the canons of the *CIC* which deal with the duties of clerics: reverence of and obedience to the Roman Pontiff and bishops, the struggle to achieve a holy life, the development of one's own spiritual and doctrinal formation, etc. That similarity in the system should not strike us as strange, if we consider that the deacons "act in the service of the mystery of Christ and of the Church."[4]

The general norm restoring the permanent diaconate in the Latin Church entrusts the local ordinary with vigilance so that deacons do not exercise *artem vel professionem*, which could be unseemly or which would hinder the fruitful performance of the sacred ministry. According to the language of c. 285 § 1, they must abstain completely from all things which would belie their state and also—according to § 2 of that same canon—from those things which, while not unbecoming, would be extraneous to the clerical state, leaving intact those exceptions that could be inferred from general or particular norms.

2. Common law on the subject consists basically of c. 288, now the object of this commentary. As a general norm, it provides that, unless particular law establishes otherwise, the duty to wear ecclesiastical dress will not be applied to permanent deacons, nor will the following prohibitions affecting clerics: accepting public offices which entail participation in the exercise of civil power; accepting the administration of goods belonging to laypersons or secular offices; performing transactions which presuppose considerable economic risk; engaging in business or commerce; and taking an active role in political parties and the management of union activities. The exercise of other rights also has peculiar nuances in the case of permanent deacons, as in the right to remuneration and and the right of association. Finally, it should be noted that transitional deacons, that is, those deacons who are candidates for the priesthood (as opposed to permanent deacons), *are* subject to the universal norms governing ecclesiastical dress for priests.

The special regime contained in the *CIC* is, as we can see, of wide scope, covering all those facets of life of the permanent deacon which are related to civil society. In contrast, spiritual and ministerial duties are retained in their entirety.

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3. Regarding the juridical status of the norms contained in the cited *Directory*, recall that the *Clarification* issued by the PCILT on October 22, 1994 has stated that *Directories* are in the nature of general executory decrees (see commentary on c. 273).

4. *SDO*, chap. VI, 25.

The high degree of insertion into the temporal arena that the common canonical system allows permanent deacons suggests that the latter could ordinarily exercise a civil profession. Regarding the right of the clergy to economic remuneration, canon 281 contemplates this possibility in relation to married deacons.

Given that this is so, it is reasonable that they may pursue economic activities without any impediment whatsoever. It should be taken into account, furthermore, that limitations on the subject of the administration of goods applicable to the clergy are a response—omitting other motivations of a spiritual nature here—to the better guardianship of the patrimony of the ecclesiastical juridical person which they may often represent, by virtue of their office. Permanent deacons do not usually assume the status of juridical representative of the ecclesial entity in which they are exercising their ministry, and they do not find themselves in the dilemma of making commitments on behalf of the patrimony of the Church.

Arguments justifying the performance of civil public offices on the part of permanent deacons do not appear as convincing, as well as the exercise of political activities of a partisan nature and union leadership. The elevated functions which the Church entrusts to them—such as authorizing preaching of the word of God (cc. 757 and 767), for instance—make it highly unadvisable that deacons appear directly involved in the exercise of civil power and political confrontation.

With regard to the professional activities of permanent deacons, the following indications should be noted:

(i) The permitted exceptions (i.e., the exercise of a civil profession, the administration of temporal goods and investments, or the exercise of a position carrying accountability, such as that of a trustee) do not preempt particular law from determining that in particular circumstances such activities are inappropriate;[5]

(ii) Permanent deacons should seek counsel from their bishops regarding their professional activities where it may be difficult to make such work compatible with the responsibility of their ministry. The competent authority should consider the requirements of ecclesial communion and fruits of the pastoral ministry of the deacon in prudently evaluating the case; the bishop might even advise a change in professional work after ordination to the diaconate has taken place[6];

(iii) Besides spiritual and pastoral considerations, the restrictions imposed upon clerics in their administration of temporal goods are designed to fulfill the objective of safeguarding the patrimony of the juridical persons which they serve. So far as a permanent deacon is concerned,

5. CC, *Directory on the ministry and life of permanent deacons*, February 22, 1998, cit., no. 12.

6. Ibid.

however, this is largely moot because he normally will not administer the ecclesiastical goods of a juridical person or otherwise be in a position where he can jeopardize its patrimonial condition. On the other hand, with respect to the personal financial or commercial dealings of permanent deacons in general, the *Directory* has this to say: "In those commercial and business activities permitted under particular law, deaons should exhibit honesty and ethical rectitude. They should be careful to fulfill their obligations under civil law where it is not contrary to natural law, to the Magisterium and to the canons of the Church and to her freedom."[7]

(iv) The exercise of a civil profession is not foreseen in the case of permanent deacons who belong to institutes of consecrated life or societies of apostolic life.

Any justification for permitting permanent deacons to assume active roles in political parties or trade union leadership appears less compelling than that of allowing them to engage in professional activities in order to provide for themselves and their families. The elevated functions to which they are confided by the Church (as, for example, preaching the word of God pursuant to cc. 757 and 767) render it unadvisable that they be directly involved in exercising political power. The *Directory for the Ministry and Life of Permanent Deacons* has emphasized that any such roles should be truly exceptional under general law: "Active involvement in political parties or trade unions, in accordance with the dispositions of the Bishops' conference, may be permitted in particular circumstances for the defense of the rights of the Church or to promote the common good. Deacons are strictly prohibited fom all involvement with political parties or trade union movements which are founded on ideologies, policies or associations incompatible with Church doctrine."[8]

Reception of the diaconate makes the recipient incapable *in all cases* from contracting marriage. Suitable young men who receive the third degree of the sacrament of orders, with the intention of remaining in it, must be celibate and should adhere to the so-called *law of celibacy*, established in c. 277 of the *CIC*.

Celibate men of a mature age who receive the diaconate are subject to the same system of governance. Married men, from among the latter group, may continue their married life, but may not enter into a new marriage subsequent to the reception of the sacrament of orders.

3. The special conditions of life of permanent deacons, in particular of married deacons, necessitates a corresponding adjustment to the duties of the clergy that the *CIC* sanctions. Thus, for example, recommendations regarding a simple way of life (c. 282 § 1), detachment from material goods (c. 282 § 2), the practice of some manner of common life (c. 280),

7. Ibid.
8. Ibid., no. 13.

and not being absent from the diocese (c. 283), cannot be cause for not fulfilling other obligations inherent to this state.

Permanent deacons enjoy the right of the clergy: the exercise of a ministry in the Church, continuing formation, association with other clergy, remuneration, social security benefits, and vacation. Regarding remuneration, the general criterion for clerics applies here, namely: "It is entirely legitimate that those who devote themselves fully to the service of God in the discharge of ecclesiastical office be equitably remunerated."[9] Accordingly, inasmuch as married deacons fully dedicated to ecclesiastical ministry presumably have no other source of income, they must be compensated sufficiently to provide for themselves and their families.[10] On the other hand, if they earn income from a civil profession (whether currently employed or as a retiree receiving a pension therefrom), they are obligated to provide for themselves and their families from such source, whether they work full- or part-time in ecclesiastical ministry.[11]

In all of the foregoing, permanent deacons may find themselves in distinct circumstances (personal, social, geographical and so forth) which augur in favor of deferring to particular law. The *Directory* itself refers to the possibility of agreements between bishops' conferences and governmental authorities to deal with these particular situations.

Among the many possibilities which may be dealt with under particular law is that which concerns the obligations of a diocese to a deacon who, without any culpability on his part, finds himself without civil employment. Another illustration would be provision by a diocese for the wife and children of a deceased deacon. In any case, the *Directory* establishes the prudent criterion that, "where possible, deacons, before ordination, should subscribe to a mutual assurance (insurance) policy which affords coverage for these eventualities."[12]

The general principle applicable to clerics with respect to membership in organizations pertains to deacons as well: they are prohibited from founding, belonging to, or participating in any associations or organizations of whatever type, civil or otherwise, which are incompatible with their clerical state, or which impede the diligent discharge of their ministry. Deacons will also avoid all organizations which, by their nature, ends or methods, work to the detriment of full hierarchical communion with the Church, as well as those which can damage the identity of the deacon as such and impede the completion of the services which he owes the people of God, and, finally, those which conspire against the Church.

9. Ibid., no. 15.
10. Ibid., no. 18.
11. Ibid., no. 19.
12. Ibid., no. 20.

Associations which could contribute to the creation of a type of "diaconal corporatism," so to speak, are the object of a specific prohibition, as being contrary to the genuine sense of being a minister. The *Directory* specifically refers to "associations which, under the guise of representation, organize deacons into a form of trade union or pressure group, thus reducing the sacred ministry to a secular profession or trade."[13] One must avoid relegating the sacred diaconate to a form of service comparable with any other, or identifying the deacon as a business professional rather than as a pastor.[14]

The *Directory* ends its discussion of associations and the permanent diaconate by stating that "deacons who come from ecclesial associations or movements may continue to enjoy the spiritual benefits of such communities and may continue to draw help and support from them in their service to a particular Church."[15]

The prohibition against voluntary inscription in military service for permanent deacons and the mandate to make use of the exclusions provided by state law against performing that service are upheld. The provisions in the Code may be applicable in the case of suitable young men and not in the case of men of a mature age, much less in the case of married deacons. Beyond the question of the actual effectiveness of the norm, it is appropriate to conclude that military activity is one of those activities understood to be extraneous to the clerical state, also applicable at the level of deacons.

It should not be forgotten that it is within the scope of particular law where the state on permanent deacons *is inserted*, and that precepts contrary to the general norm of c. 288 may be adopted. Thus, for instance, through a general decree of the Inter-territorial Conference of Catholic Bishops of Gambia, Liberia and Sierra Leon (ITCABI), it is established that "permanent deacons shall be obligated to adhere to the prescriptions contained in cc. 284, 285 §§ 3 and 4, 286 and 287 § 2."[16]

13. Ibid., no. 11.
14. Ibid.
15. Ibid.
16. Approved October 1985, cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze episcopali complementare al CIC* (Milan 1990), p. 287. (Editor's Note: For complementary norms promulgated by English language Conferences of Bishops, see Volume V, Appendix 3.)

289 **§ 1. Cum servitium militare statui clericali minus congruat, clerici itemque candidati ad sacros ordines militiam ne capessant voluntarii, nisi de sui Ordinarii licentia.**

§ 2. Clerici utantur exemptionibus, quas ab exercendis muneribus et publicis civilibus officiis a statu clericali alienis, in eorum favorem eaedem leges aut conventiones vel consuetudines concedunt nisi in casibus particularibus aliter Ordinarius proprius decreverit.

§ 1. As military service ill befits the clerical state, clerics and candidates for sacred orders are not to volunteer for the armed services without the permission of their Ordinary.

§ 2. Clerics are to take advantage of exemptions from exercising functions and public civil offices foreign to the clerical state, which are granted in their favor by law, agreements or customs, unless their proper Ordinary has in particular cases decreed otherwise.

SOURCES: § 1: cc.121, 141; *SCCong* Decr. *Redeuntibus e militari*, 25 oct. 1918 (*AAS* 10 [1918] 481–486); *SCCong* Decl., 21 dec. 1918 (*AAS* 11 [1919] 6–7); *SCCong* Resp., 28 mar. 1919 (*AAS* 11 [1919] 177–178); SCR Decr. *Militare servitium*, 30 iul. 1957 (*AAS* 49 [1957] 871–874)
§ 2: c. 123

CROSS REFERENCES: cc. 285 §§ 1 et 2, 287 § 1

COMMENTARY

Jorge de Otaduy

1. Military service receives special treatment within the framework of activities that are judged to be unsuitable for the clergy. Without a doubt, it should be included among those activities designated as foreign to their condition as dispensers of the mysteries of God and as true priests of the New Testament, but it does not appear in the list of prohibited activities in cc. 285 §§ 3 and 4, 286 and 287 § 2.

Instead of an explicit prohibitive mandate, a lack of congruity is pointed out, in a very qualified manner, between military activity and the clerical condition, and clerics and candidates to sacred orders are urged not to present themselves as volunteers for service in the armed forces.

It is obvious that the matter of the morality of the military profession as such is not raised in this canon, even in an implicit way. The position of the Church on this point is clear and leaves no room for doubt. Service in the armed forces may be undertaken as a contribution to the development of the security and freedom of peoples and in establishing peace (*GS* 79). The lack of congruity referred to in c. 289 is circumscribed exclusively to clerics, whose mission obliges them to appear as sowers of peace and harmony, in imitation of Christ, with whom they identify themselves sacramentally.

2. Hidden behind the precept of the present canon lies, in my opinion, a possible conflict between the canonical order and the state, which ends in favor of the latter.

Canon 289, in fact, seems to bear in mind the reality of those countries in which a system of compulsory military service exists for all citizens declared fit for service. Clerics do not lose their status as citizens simply because they are clerics, and the state extends its legislative competence over them without restraints, as long as a juridical norm which would admit a different treatment does not appear. In this sense, while the canonical system expresses the lack of congruity between military service and the condition as sacred minister, the Church submits to the discipline of the state, accepting compulsory incorporation of clerics in the army, thereby avoiding placing them in the situation of committing a penal unlawful act as a result of their refusal.

Canon law is limited to prohibiting the voluntary rendering of military service and orders clerics to seek protection under the exemptions from military service provided for by the state legal system.

Nevertheless, permission from the ordinary could be given for acting otherwise under truly extraordinary circumstances. The case of a person who would consider rendering military service as a moral duty might be envisioned. Even so, recourse to the defense of one's own country could be given without the use of arms, this being the conduct that clashes most head-on with the clerical condition.

In the chapter on exemptions, those that could be given through means of a concordat, in order to relieve clerics of their military obligations, are to be mentioned in the first place. On the other hand, and in a general sense, the figure of the conscientious objector might be applicable in this case, if it finds sufficient legal protection in the country in question.

In that case, it would be sufficient that clerics express their resistance, not necessarily because they experience revulsion towards the use of arms, but rather because they understand that military activity is not consistent with the mission they are fulfilling as sacred ministers of the Catholic Church. The issue could be significant for purposes of the proof required at times in administrative procedures aimed at recognizing the condition of the objector.

The legislation on conscientious objection raises the difficulty that, from the perspective that is of interest here, it usually requires a substitution of some other service. The activity required could likewise distance the sacred minister from his specific mission, unless he was permitted to render service of a religious type.

Curiously enough, in Spain, well in advance of the promulgation of legislation on conscientious objection to military service, it was recognized "as the rendering of substitute social service the service of those who, during a period of three years, under the authority of the ecclesiastical hierarchy, consecrated themselves to the apostolate as presbyters, deacons, or the professed religious, within the territories of the mission or as chaplains of emigrants."[1]

Beyond the exception indicated above, the Spanish agreement on religious services in the armed forces and the military service of both clerics and the religious established, in principle, that the latter shall remain subject to the general provisions of military service.[2] In all other respects, "for those who are already presbyters, they may be entrusted with specific functions of their ministry, for which they will receive relevant powers from the Military Vicar General."[3] In addition, "for those presbyters to whom are not entrusted the functions mentioned above and for deacons and the professed religious who are not priests, they will be assigned missions that are not incompatible with their state, in accordance with canon law."[4] As can be proven, competence over the system of ecclesiastical personnel in ranks always falls to the military authority.

Subsequent unilateral legislation developing from the Spanish agreement has softened that principle when it established that "all presbyters remain at the disposal of the Military Vicar General, to be used in any capacity in the armed forces where such religious service is required, for which they will receive the relevant powers from the Military Vicar General."[5] The importance of this norm rests, as is obvious, on the fact that it is the ordinariate who proposes the use of the presbyters, placing the needs of pastoral service over and above any other consideration.

3. Clerics are to likewise take advantage of—according to the language of c. 289 § 2—the exemptions granted to them by law, agreements or customs, from not exercising public functions or civil office that are foreign to their clerical state, unless their proper ordinary determines oth-

1. Agreement of January 3, 1979, between Spain and the Holy See, *sobre la asistencia religiosa a las Fuerzas Armadas y servicio militar de clérigos y religiosos*, art. V §4.
2. Cf. ibid., art. V.
3. Ibid., art. V §2.
4. Ibid., art. V §3.
5. Ministerial Order, 38/1985, June 24, art. 4. "Boletin Oficial de Defensa," August 6, 1985.

erwise in particular cases. It is not appropriate to interpret the canonical provision as motivated purely by the *absence of citizenship*, but rather as dedication to what constitutes their proper and specific mission, without forgetting, on the other hand, that the exercise of the sacred ministry, at the service of all who ask for it, contains a significant dimension of social service in its core.

CAPUT IV
De amissione status clericalis

CHAPTER IV
Loss of the Clerical State

290 **Sacra ordinatio, semel valide recepta, numquam irrita fit. Clericus tamen statum clericalem amittit:**

1° sententia iudicali aut decreto administrativo, quo invaliditas sacrae ordinationis declaratur;

2° poena dimissionis legitime irrogata;

3° rescripto Apostolicae Sedis; quod vero rescriptum diaconis ob graves tantum causas, presbyteris ob gravissimas causas ac Apostolica Sede conceditur.

Sacred ordination once validly received never becomes invalid. A cleric, however, loses the clerical state:

1° by a judgment of a court or an administrative decree, declaring the ordination invalid;

2° by the penalty of dismissal lawfully imposed;

3° by a rescript of the Apostolic See; this rescript, however, is granted by the Apostolic See to deacons for only grave reasons and to priests for only the gravest of reasons.

SOURCES: 1°: cc. 211, 1993–1998; SCDS Decr. *Ut locorum Ordinarii*, 9 iun. 1931 (*AAS* 23 [1931] 457–492)
2°: cc. 211 § 1, 2198, 12°, 2305, 2314 § 1,3°, 2343 § 1,3°, 2354 § 2, 2368 § 1, 2388 § 1
3°: SCR Resp., 23 iun. 1954; *EM* IX, 1; PAULUS PP. VI, Enc. *Sacerdotalis caelibatus*, 24 iun. 1967 (*AAS* 59 [1967] 691); SCDF Normae, 13 ian. 1971 (*AAS* 63 [1971] 303–308); SCDF Litt. circ., 13 ian. 1971 (*AAS* 63 [1971] 309–310); SCDF Decl., 26 iun. 1972 (*AAS* 64 [1972] 641–643); SCDF Litt. circ., 14 oct. 1980 (*AAS* 72 [1980] 1132–1135); SCDF Normae, 14 oct. 1980 (*AAS* 72 [1980] 1136–1137)

291 **Praeter casus de quibus in can. 290, no. 1, amissio status clericalis non secumfert dispensationem ab obligatione coelibatus, quae ab uno tantum Romano Pontifice conceditur.**

Apart from the cases mentioned in can. 290 1°, the loss of the clerical state does not carry with it a dispensation from the obligation of celibacy, which is granted solely by the Roman Pontiff.

SOURCES: c. 213 § 2; IOANNES PAULUS PP. II, Let. *Novo incipiente*, 8 apr. 1979, 9 (*AAS* 71 [1979] 409–411); SCDF Litt. circ., 14 oct. 1980, 3 (*AAS* 72 [1980] 1133–1134); SCDF Normae, 14 oct. 1980, 1 (*AAS* 72 [1980] 1136)

CROSS REFERENCES: cc. 247, 277, 292–293, 1009, 1012, 1024, 1026, 1037, 1087, 1317, 1364 § 2, 1367, 1370 § 1, 1394 § 1, 1395, 1708–1712

COMMENTARY

Jorge de Otaduy

1. The canonical system has traditionally established a clearer distinction between the two juridical situations that we are about to discuss here: the loss of clerical state and the release from the obligations joined to reception of the sacrament.

In principle, it can be said that the relationship between them is one of cause and effect, although the latter does not necessarily follow in an automatic way, nor does it always occur fully. Among the clerical duties, celibacy has special rules, as we shall have the occasion to prove when discussing c. 291.

While the conceptual distinction between the loss of clerical state and release from obligations is very clear, it is difficult—and in my opinion, harmful—to explore one question and the other separately. Should this be done, at the very least, undesirable repetitions may occur. This is the reason that has prompted the joint exposition of this subject.

2. The chapter pertaining to the loss of clerical state opens, as did the respective title in the *CIC*/1917, with the reference to the doctrine of *sacramental nature*, the indelible mark imprinted on the soul through the reception of sacred orders, from which it follows that this cannot be repeated or annulled.

The perspective of this study, however, is not that of sacramental effectiveness, but rather of the juridical status of those who have received sacred orders, which may undergo significant modifications, even while the sacrament remains in its full ontological reality.

What we call today, in a more balanced sense, *loss of clerical state*, was called *reduction to the lay state* in Pio-Benedictine language. A pejorative reference to the lay condition is thereby avoided, and the implicit conceptual bias of the Church, expressed in those words, is overcome. The principle of fundamental equality of the faithful obliges us to adopt this solution. For these same reasons, the former canonical penalty of *degradation* comes to be called, in a much more neutral fashion, *dismissal*.

Canon 290 contemplates different ways in which the juridical state of the cleric can be lost—the *clerical state*, says the text, with an expression that turns out to be less precise—as a consequence of the plurality of situations in which those who bear such a state may find themselves.

The first is that of the person who has not validly received the sacrament. In such a case, the juridical activity is directed towards proving that there did not exist a valid ordination because of some substantial defect in the administration or reception of the sacrament. The law provides a double path, either administrative or judicial, for this purpose. It may happen that the loss of clerical state has a penal nature and is imposed ex officio; or—and this is the third form described by c. 290—it may be a response to a pastoral motivation and constitutes a dispensation, granted a rescript of the Apostolic See.

Before we stop to analyze each of these hypothetical situations, let us recall what was said at the beginning of this commentary: the canonical tradition has always distinguished between the juridical loss of the clerical state and a release from the obligations joined to the reception of the sacrament, among which a special norm has been reserved for celibacy.

3. The declaration of invalidity of the sacrament of orders is not a discretionary act of the authority, as happens in other cases, but rather a strict obligation of justice. The causes against sacred ordination are considered to be of public interest. As León del Amo has observed, "It never concerns the private interest of the cleric alone. These cases, in a significant way, all affect the common good insofar as they concern both the personal status of the ordained and the scandal that must be avoided everywhere and at all times."[1]

The procedural treatment of this subject finds space in the commentaries on the canons belonging to book VII, to which I here refer. For our part, it is sufficient to recall here that, by way of c. 1024, ordination of the unsuitable would be invalid. Also invalid would be ordination of the one

1. L. DEL AMO, commentary to the title "De causis ad sacrae ordinationis nullitatem declarandam," in *Pamplona Com.*

who finds himself in a situation involving the absolute lack of freedom, by virtue of the provisions set forth in c. 1026, which would annul the human act and would lead to the exclusion of the intention of receiving sacred orders. It would likewise invalidate the ordination of the person who externally feigns the rites while having an internal non-existent intention.[2] To the preceding causes must be added those in reference to the incapacity of the minister of ordination (c. 1012) and the non-observance of essential rites (c. 1009).

The definitive judgment of nullity of sacred ordination produces the loss of all rights belonging to the clerical state and the release from all obligations, including that of celibacy (c. 1712).

4. The loss of the juridical condition of a cleric may constitute a canonical penalty—dismissal or expulsion from the clerical state—applicable in response to the following offenses, classified under universal law: apostasy, heresy and schism (c. 1364 § 2); profanation of the consecrated species (c. 1367); physical violence against the Roman Pontiff (c. 1370 § 1); solicitation (c. 1387); attempted marriage (c. 1394 § 1); concubinage and other offenses against the sixth commandment (c. 1395).

Expulsion from the clerical state cannot be imposed, according to what is prescribed under c. 1317, in a particular law; and, *a fortiori*, the imposition of that penalty by means of a precept is also prohibited to those who have the power of governance.

Certain 1971 norms—which we will explore in some detail below—dealing with a new system of reduction of clerics to the lay state,[3] devoted the last section to those cases in which the ecclesiastical authority should proceed ex officio to the reduction to the lay state. It was then said that the system established for priests who spontaneously requested laicization had to be applied "by observing due proportions, in those cases in which, after the necessary investigation, it was seen that a certain priest, through his improper life or due to doctrinal errors or for some other grave cause, ought to be reduced to the lay state and given a dispensation at the same time, prompted by feelings of compassion, so that he would not be exposed to the danger of eternal condemnation."[4] At the current

2. Cf. T. RINCÓN-PÉREZ, "Los sujetos del ordenamiento canónico," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 563.

3. Cf. SCDF, Norms for *Normas para tramitar en las Curias diocesanas y en las religiosas las causas de reducción al estado laical con dispensa de las obligaciones anejas a la sagrada ordenación;* January 13, 1971, in *AAS* 63 (1971), pp. 303–308; in *CLD* 7: 121–124 as "*Declaration regarding the interpretation of certain provisions which were established by the norms of 13 January, 1971.*" The same SCDF published on June 26, 1972 a *Declaratio*, a type of authentic interpretation that referred to the various points of the norms of 1971. Cf. *AAS* 64 (1972), pp. 641–643.

4. SCDF, *Normas para tramitar...*, cit., VII.; in *CLD* 7: 121–124 as "*Declaration regarding the interpretation of certain provisions which were established by the norms of 13 January, 1971.*"

time, in accordance with c. 291, a different criterion is used, such that the loss of the clerical state, due to the penalty of dismissal legitimately imposed, does not carry with it a dispensation from celibacy.

5. The former *reduction to the lay state*, according to the significant c. 214 of the *CIC*/1917, could legitimately occur through a rescript of the Holy See, with the subsequent loss of office, benefices, clerical rights and privileges, and release from the obligations pertaining thereto, with the exception of the law of celibacy. Reduction to the clerical state by virtue of a dispensation, without any obligation whatsoever of celibacy or of the celebration of the canonical hours may occur only through judicial or administrative means,[5] in the situation that the cleric had received sacred orders coerced by grave fear (the validity of the sacrament is inferred from the language of the canon, despite the diminished freedom), and afterwards, freed from fear, he would not have ratified his ordination, at least tacitly through the exercise of orders. After defective consent had been proven, the defect of subsequent ratification, which had to be the subject of demonstration, was not presumed.

After promulgation of the *CIC*/1917, ecclesiastical practice about the declaration of nullity of sacred orders, and also about dispensation from celibacy, was extremely rigid. In practice, the latter was granted, apart from the explicit legal provisions contained in c. 214, only to those who had been ordained before the age of discretion, if, upon reaching the appropriate age, they did not confirm the duties inherent to the orders received. The Holy See, on the other hand, granted dispensations with relative ease to subdeacons and with greater difficulty, to deacons, and never to presbyters, except under the extraordinary cases already outlined. "For its internal forum," wrote Colagiovanni, "the Apostolic Sacred Penitentiary provided that, through its Decree of April 18, 1936, the priest who had attempted marriage was absolved from censure and was accepted, *remoto scandalo*, upon reception of the sacraments, *dummodo cum comparte tamquam frater et soror viveret*. But, as we can see, the convalidation of the attempted marriage was not admitted."[6]

In 1964, the SCHO published the *Normae ad causas parandas de sacra ordinatione eiusque oneribus*.[7] The so-called causes against sacred ordination continued within the scope of competence of the SCDS; procedural norms, of a judicial nature, were established in these provisions for granting dispensations from the obligations attached to the sacrament. An attempt was made primarily to resolve the problem of those elderly priests, whose true state would become known in these surroundings, and

5. An *Instruction* from the SCDS, from June 9, 1931, established an administrative proceeding for the resolution of these cases. Cf. *AAS*, 23 (1931), pp. 457–473.

6. E. COLAGIOVANNI, "La procedura per la dispensa dagli oneri del sacerdozio e del diaconato," in *I procedimenti speciali nel diritto canonico* (Vatican City 1992), p. 374.

7. Cf. X. OCHOA, *Leges Ecclesiae* III (Rome 1972), no. 3162, cols. 4463–4469.

who had lived in concubinage for many years or who had attempted civil marriage. In such cases, the possibility of celebrating before the ordinary what was called at that time a marriage of conscience was given. The mercy of the Church should reach out to these priests, while, at the same time, the principle of ecclesiastical celibacy remains protected and untouched.

The 1964 norms, while addressing a solution of truly irreversible situations, have particular relevance because they have given rise, for the first time, to the breaking up of the principle of laicization maintained by the Church, regarding the impossibility of a dispensation from celibacy given to presbyters.

Paul VI, in his Encyclical *Sacerdotalis caelibatus* (June 24, 1967), provided that, with a view towards granting the appropriate dispensations, those factors which might have diminished the freedom or the voluntary nature of the ordained adult, apart from coercion through grave fear, should be taken into account, even though they do not nullify ordination: "Other very grave reasons," said the Pontiff, "which might give rise to well-founded and real doubts about the full freedom and responsibility of the candidate to the priesthood and about his suitability for the priestly state, for the purpose of releasing from their obligations assumed those whom diligent judicial process has effectively demonstrated that they are not suitable" (n. 84).

The SCDF derogated the norms of 1964, in handing down those of January 13, 1971.[8] The new procedure no longer was of a judicial nature, but instead involved a simple *investigation* in order to prove that the reasons of the petitioner were true. It was not required, therefore, to demonstrate the invalidity of ordination or of the obligations assumed, but rather that dispensation from the latter be granted.

The causes capable of being alleged extraordinarily widened the tight framework outlined by c. 214. Those existing prior to ordination were accepted as well as those that had arisen afterwards. Among the first ones were the following: illnesses, physiological or psychological immaturity, failures against the sixth commandment during the time of formation in the seminary or in the religious institute, pressures on the part of family, and the errors of superiors, whether within the internal or external forum, when expressing a judgment about their vocation. The reasons which arose subsequent to ordination and which were capable of being alleged in the petition for dispensation from celibacy, were the following: the lack of adaptation to the sacred ministry, anguish or crises in spiritual life or in

8. Cf. SCDF, *Normas para tramitar,...*, cit.; in *CLD* 7: 121–124 as "*Declaration regarding the interpretation of certain provisions which were established by the norms of 13 January, 1971.*"

faith itself, and errors about celibacy or the priesthood, dissolute and other similar habits.[9]

The system established favored the rapid expansion of a mentality that conceived a dispensation from celibacy as a right of the petitioner, with the result that the causal nature of the institute was obscured. The interpretative Declaration of June 26, 1972, attempted to correct, to some extent, those mistaken forms of interpretation of the nature of a dispensation, advising that it "is not granted in an automatic manner, but rather for proportionately grave causes" and that "it is not sufficient to adduce as causes either the simple wish to marry or contempt for the law of sacred celibacy or the attempt to enter into civil marriage or setting the date of the wedding in the hope of more easily obtaining the dispensation."[10]

The most salient aspect of the 1971 norms, to the extent that it presupposed a radical change in criteria in regard to the permanent canonical tradition, was that reduction inseparably included dispensation from celibacy. If the petitioner was a religious, the rescript also contained a dispensation from vows; similarly, to the extent that it was necessary, the same rescript granted absolution from the censures that had been incurred and legitimization of offspring.

In all cases the dispensation was reserved to the Roman Pontiff. The possibility of applying c. 81 of the *CIC*/1917 to this hypothetical situation was raised, regarding granting ordinaries the power to dispense from the general laws of the Church in a particular case, if an explicit or implicit concession stood in the way or if recourse to the Holy See was difficult, or if there was a risk of grave danger in the delay. The response, in the Declaration of June 26, 1972, was negative:[11] "this dispensation—it can be read—is reserved solely and personally to the Supreme Pontiff." For that very reason, continued the same text, "marriage celebrated without a dispensation from the Apostolic See does not have any validity."[12]

6. On October 14, 1980, some new norms of the SCDF regarding the processing of dispensations from priestly celibacy,[13] were approved, which are the ones currently in force. In the introductory letter, addressed to all local ordinaries and general moderators of clerical institutes, it was affirmed that dispensation should not be interpreted as a right which the Church would have to recognize indiscriminately to all priests; on the contrary, "what must be considered as a true right is the oblation of himself which the priest makes to Christ and to the entire people of God, who, therefore, expect of him faithful observance of the promised fidelity, even

9. Cf. ibid., II, 3, b.
10. SCDF, *Declaratio...*, cit., II.
11. Cf. ibid., III. The *Declaratio* is supported in mp *EM*, no. IX, 1.
12. SCDF, *Declaratio...*, cit., III.
13. Cf. SCDF, *De modo procedendi in examine et resolutione petitionum quae dispensationem a caelibatu respiciunt*, in *AAS* 72 (1980), pp. 1132–1137.

despite the great difficulties which might arise during his life."[14] Special importance is given to the good example and the testimony of priestly fidelity to the vocation itself unto death—added John Paul II—for the members of the faithful united in marriage.[15]

The current norms restore the separate processing of requests for dispensation from celibacy and the loss of clerical state. This criterion was finally crystallized in c. 291 of the current *CIC*, whose interpretation leaves no room for doubt: "Apart from the cases mentioned in can. 290, no. 1 (declaration of the invalidity of sacred orders), the loss of the clerical state does not carry with it a dispensation from the obligation of celibacy, which is granted solely by the Roman Pontiff."

In addition to this important modification, the 1980 norms introduced another modification in regard to the causes capable of being alleged to petition for a dispensation from celibacy. Now, insofar as the causes arising subsequent to ordination, only truly irreversible situations (marriage that was celebrated, children that were procreated, etc.) are taken into account for elderly priests who have abandoned the ministry long before and who wish to regularize their situation. In practical terms, it presupposes a return to the criteria of 1964.

Insofar as the causes existing prior to ordination are concerned, consideration shall be given only to those by virtue of which the sacrament ought not to have been received, quia scilicet vel debitus libertatis vel responsabilitatis respectus defuit.[16] The lack of freedom or responsibility, if absolute, would obviously give rise to the nullity of the assumption of the obligations, but a total absence of voluntary nature of the act is not necessary for dispensation to be granted.

It is also considered that the causes existing prior to ordination justifying the petition for dispensation from celibacy may emerge from superiors, in the sense that they were unable to form a judgment at the appropriate time, in a prudent and adequate manner, about the true capacity of the candidate to lead a life consecrated to the Lord with perpetual celibacy.[17]

14. Ibid., p. 1133.
15. Cf. ibid.
16. Ibid., p. 1134.
17. Cf. ibid.

292 **Clericus qui statum clericalem ad normam iuris amittit, cum eo amittit iura statui clericali propria, nec ullis iam adstringitur obligationibus status clericalis, firmo praescripto can. 291; potestatem ordinis exercere prohibetur, salvo praescripto can. 976; eo ipso privatur omnibus officiis, numeribus muneribus e potestate qualibet delegata.**

A cleric who loses the clerical state in accordance with the law, loses thereby the rights that are proper to the clerical state and is no longer bound by any obligations of the clerical state, without prejudice to can. 291. He is prohibited from exercising the power of order, without prejudice to can. 976. He is automatically deprived of all offices and roles and of any delegated power.

SOURCES: c. 213 § 1; *UT* 917; SCDF Normae, 13 ian. 1971, VI, 4 (*AAS* 63 [1971] 308); SCCE Decl., 15 aug. 1975; SCCE *Notif.*, 20 aug. 1976; SCDF Normae, 14 oct. 1980, 5 (*AAS* 72 [1980] 1134)

CROSS REFERENCES: cc. 277, 281, 291, 702, 976

COMMENTARY

Jorge de Otaduy

1. With the loss of clerical state—in accordance with c. 292—all rights and duties of the cleric, with the exception of celibacy, are extinguished. Deprivation of all offices and roles and of any delegated power likewise occurs. Acts of power of jurisdiction that he may seek to perform, and those that are similar to it, are null; activities inherent to the power of order, while illicit, remain valid. These prohibitions cease whenever it involves the absolution of censures and sins, of whatever type they may be, upon danger of death.

2. In considering this matter, the aspect that deserves more prominent attention is the reference to the system of separation from those functions that the laicized cleric had been performing.

The provisions of the 1980 SCDF,[1] regarding the processing of dispensations from celibacy, determine the aspects which are of interest

1. Cf. SCDF, *De modo procedendi in examine et resolutione petitionum quae dispensationem a caelibatu respiciunt*, October 14, 1980, in *AAS* 72 (1980), pp. 1132–1137.

here, but do not properly fit within the procedural norms, but instead, in those contained in the text itself of the rescript of the concession of the favor. These norms are clearly inspired in section VI of those promulgated in 1971 about reduction to the lay state,[2] which specifically dealt with the conditions to be met in regard to those who abandoned the ministry. Their content was corrected in certain small details.

"The priest receiving the dispensation," no. 4 of the rescript reads, "loses, through this very act, all rights inherent to the clerical state, and all dignities and ecclesiastical offices and henceforth ceases to be bound by any obligations belonging to the clerical state." After this generic affirmation, the framework of certain prohibitions relate to the ministerial task and other activities of governance, formation or education.

a) Insofar as the former is concerned, the one dispensed is excluded from exercising the sacred ministry. However, he can validly and licitly absolve sins and censures of any penitent in danger of death. He is prohibited from preaching the homily, as well as acting as an extraordinary minister of holy communion. The prohibition, indicated in the 1971 norms, against taking an active part in liturgical celebrations in those places where his status as a priest was well known, disappears. Within the pastoral context, they are prevented from performing *officium directivum* of any kind. Even using the expression in a strictly canonical sense, the marked breadth of the concept of *officium*, adopted by c. 145, allows us to conclude simply that they cannot exercise any stable position in the Church.

These norms, in the 1971 and 1980 versions, have not produced any innovation in the canonical system, properly speaking; they delineate the criteria that the Church has always sustained and that Paul VI recalled also, through a letter directed to the Cardinal Secretary of State on February 2, 1970. The Pontiff referred to the duty not to allow the priestly ministry to be exercised by those who had lost their status as clerics. "We scarcely dare to think," he concluded, "about the incalculable consequences which a decision otherwise would bring to the people of God, on both a spiritual and pastoral plane."[3]

Insofar as the tasks of governance and formation are concerned, the 1980 norms are categorical, in the sense that they do not allow those who have been laicized to hold any position in seminaries or institutes equivalent to them.

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2. Cf. SCDF, *Normas para tramitar en las Curias diocesanas y en las religiosas las causas de reducción al estado laical con dispensa de las obligaciones anejas a la sagrada ordenación*, January 13, 1971, in *AAS* 63 (1971), pp. 303–308; in CLD 7: 121–124 as "*Declaration regarding the interpretation of certain provisions which were established by the norms issued 13 January, 1971.*" Cf. SCDF, *Declaratio*, June 26, 1972, in *AAS* 64 (1972), pp. 641–643.

3. The text of the letter appears in *Vida religiosa* 30 (1971), pp. 329–330.

The recent *Directory on the Ministry and Life of Priests* points out, in turn, that charity towards those who have abandoned the ministry "should never lead us to consider the possibility of entrusting ecclesiastical tasks to them, which might create confusion and uncertainty, above all among the faithful, as a result of their situation."[4]

b) On the subject of educational tasks, it is necessary to introduce greater clarification. The 1980 norms, in contrast with those of 1971, improve the systematic ordering of the whole. The competence of the hierarchy to determine the norms for the activities of priests who have received dispensations within the educational sphere is justified by appealing to two criteria worthy of consideration: the ecclesiastical nature of the entity in which they are going to work and the religious subject matter that they are going to teach.

Insofar as concerns the former, the norms distinguish between *dependent* and *non-dependent centers* from ecclesiastical authority. It is necessary to understand, in my opinion, that the former are all those directed by public ecclesiastical juridic persons, not only those which, under authorization granted according to cc. 803 § 3 and 808, may use the title of catholic schools or universities. Thus, in these centers, if they are of a higher educational level, priests who have received dispensations may not hold either directing or teaching positions. For those at the lower levels, they find the same initial prohibition, although the possibility is contemplated that the ordinary—according to his prudent judgment, and provided that a scandal would not ensue—is allowed to act otherwise, insofar as the performance of teaching positions is concerned.

At centers not dependent upon the ecclesiastical authority, whether these are private or whether they belong to the state, the competence of the hierarchy regarding the activities of priests who have received dispensations is reduced to control over teachings of a religious type. At advanced centers, they cannot teach theological disciplines or any other disciplines closely linked to them. This same norm governs educational centers of a lower level, with the exception that permission from the ordinary, to which we have alluded above, may be obtained.

It is appropriate to refer to two points which the Declaration of the SDCF, of June 26, 1972, authentically interpreted in regard to the norms of the preceding year and which may also help us to better understand the norms currently in effect since 1980.

The first of these clarifications alluded to the fact that the words *similar institutes* (theological faculties) should be understood as facul-

4. CC, *Directory on the ministry and life of priests*, January 31, 1994, no. 97.

ties, institutes, schools, etc., of ecclesiastical or religious sciences (for example, schools of canon law, missionology, history of the Church, philosophy or pastoral institutes, religious pedagogy or catechetical instruction, etc.).

The second point, discussed in the 1972 Declaration dealt with determining the disciplines related to those of a theological nature, which those who have received dispensations are prohibited from teaching. It indicated, by way of example, religious pedagogy and catechetical instruction. In order to resolve conflicts that might arise between one subject and another, the CDF, in conjunction with the CCE, has been given competence.

For those matters pertaining to the restriction of teaching activities for priests who have received dispensations, the provisions set forth in the statutes of the entities permanently offering the services and the schools recognized by the respective ordinaries must be taken into account, as is logical, in addition to the general norms. Insofar as state centers are concerned, it would be necessary to observe if there exist any provisions in a concordat—which is not infrequent—that in some way deals with problems of this kind, by way of teaching the subject of religion or the theological disciplines at public centers.

3. There is a point of considerable relevance that does not appear to be treated in the new regulations and which occupies the last paragraph of section VI of the norms of January 13, 1971. I am referring to the subject of spiritual assistance, and material as well, to the extent possible, which the competent ordinaries should render to laicized priests.[5]

With the loss of clerical state, the juridical entitlements that confer the right to remuneration and social-welfare benefits are extinguished. For this reason, the norm we are commenting upon here imposed upon the ecclesiastical authority an obligation to act with equity, but did not confer a juridical entitlement to the one who had received the dispensation to claim compensation of any kind. The formula delineated was similar to the *subsidium caritativum* which the canonical system recognizes on behalf of those who have abandoned religious life and who find themselves in an analogous situation of need (c. 702).

Nor could a pension meeting the needs that have arisen from illness or old age be juridically demanded from the ecclesiastical authority, on the part of the laicized party. In those countries where the clergy have

5. Cf. SCDF, *Normas para tramitar...*, cit.; in *CLD* 7: 121–124 as "*Declaration regarding the interpretation of certain provisions which were established by the norms of 13 January, 1971.*"

been integrated into the state system of social security, the problem might possibly find a rapid solution through that channel. Under those circumstances, a claim brought by a priest who has received dispensation would warrant attention, in the event that the obligated entity had not paid the applicable contributions to social security while the relationship of pastoral service between the cleric and the ecclesiastical authority was in effect.[6]

6. I have worked extensively on the study of juridical problems—from both canonical and civil sources—which form the ministerial activity of clerics, in *Régimen jurídico español del trabajo de eclesiásticos y de religiosos* (Madrid 1993).

293 Clericus qui statum clericalem amisit, nequit denuo inter clericos adscribi, nisi per Apostolicae Sedis rescriptum.

A cleric who has lost the clerical state cannot be enrolled as a cleric again save by rescript of the Apostolic See.

SOURCES: c. 212 § 2; SCHO Litt. circ. et Normae, 2 feb. 1964; SCDF Normae, 14 oct. 1980, 6 (*AAS* 72 [1980] 1134–1135)

CROSS REFERENCES: cc. 290–292, 690

COMMENTARY

Jorge de Otaduy

The doctrine of the sacramental character, imprinted on the soul through the sacrament of orders, lays the foundation for what is set forth in this canon. Rehabilitation of the cleric, after the valid reception of the sacrament and the successive loss of the canonical condition once acquired, does not require new ordination, but permission from the Apostolic See.

When the petitioning cleric, upon notification of the rescript of dispensation, expresses his intent to persevere in the exercise of the priesthood, continues to be suspended from any office, in view of such notification, he has already lost the clerical state. He might, all the same, send a new request to the congregation to be readmitted to the clerical state. The congregation, after a just time of probation, and relying on the favorable judgment of the ordinary, will decide about the appropriate time to submit a new petition to the Supreme Pontiff.[1]

Readmission into the clergy of the person who was previously laicized does not constitute a right, nor do sacred ordination or dispensation from obligations assumed by the sacrament.

From a practical point of view, the problem of readmission into the clergy of those who have been granted dispensation acquired considerable prominence after promulgation of the norms of the 1971 SCDF, about

1. Cf. SCDF, *Declaratio*, June 26, 1972, IV, in *AAS* 64 (1972), pp. 641–643.

what was called at that time reduction to the lay state.[2] These provisions (see commentaries to cc. 290 to 292) established the joint and inseparable granting of the loss of clerical state and dispensation from celibacy, at the same time that they ordered a simple investigation to be conducted—of a non-judicial nature—for the sole purpose of proving whether the reasons alleged by the petitioner were true.

The speed and ease with which such petitions were processed and dispensations were granted gave rise to the fact that "not a few priests who had submitted a request for dispensation as a result of a sudden crisis later withdrew their petitions, when the petition was already being considered by the Congregation.

"Others, after having received the rescript of concession, moved by grace and afflicted by pangs of conscience, did not want to accept it, in order to preserve the exercise of the priesthood."[3] However, the rescript that produces the loss of clerical state and grants dispensation from celibacy acquires full force immediately upon notification on the part of the ordinary and does not require acceptance from the petitioner.

In light of these facts, the SCDF urged ordinaries once more to offer "paternal assistance to priests in situations of vocational crisis, so that, on a matter of such importance for their own future and for the good of the Church, they would not act precipitously and would not seek dispensation without grave and objective reasons."[4] It likewise insisted that the ordinaries not process petitions that did not have sufficient grounds, "above all whenever it involved priests that had received ordination a few years before."[5]

Readmission of the cleric requires, as a consequence of the impossibility of admitting transient or acephalous clergy, the prior solution to the problem of their incardination. The congregation resolves petitions, relying on the consent of the respective ordinaries, which must also be given in regard to this fundamental point that, in the view of this situation, comes into play.

The prudence of the Apostolic See will lead towards the conclusion that permission would not be granted as long as the causes motivating the loss of clerical state have not disappeared. Thus, for instance, it will not be granted to the cleric who has contracted marriage until dissolution of such bond has been verified.

2. Cf. SCDF, *Normas para tramitar en las Curias diocesanas y en las religiosas las causas de reducción al estado laical con dispensa de las obligaciones anejas a la sagrada ordenación*, January 13, 1971, in *AAS* 63 (1971), pp. 303–308; in *CLD* 7: 121–124 as *"Declaration regarding the interpretation of certain provisions which were established by the norms issued 13 January, 1971."*

3. SDCF, *Declaratio*, June 26, 1972, I.

4. Ibid.

5. Ibid., II.

TITULUS IV
De Prælaturis personalibus

TITLE IV
Personal Prelatures

INTRODUCTION

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1. *Personal prelatures: a new juridical structure set up by Vatican Council II*

A comprehensive hermeneutical study of the text of the new *CIC* requires the study of the Council texts as a fundamental basis, not just considered in isolation from one another, but within the broader context of the guidelines of the theological and canonical doctrine of Vatican Council II, which the new Code seeks to reflect. Let us examine, then, the context in which the norms of the Canon Code should be understood in regard to personal prelatures.

In its desire to renew the pastoral action of the Church, Vatican Council II gave rise to certain pastoral structures which, while they can trace their roots back to organizational forms which had arisen in the Church throughout history, exhibit certain innovative features. These structures are discussed in number 10 of the Decree *Presbyterorum ordinis*, which is the passage where the Council proposes the creation of new forms of organization of the Church[1] wherever pastoral reasons make it

1. For the *process* of the personal prelatures in the Council, cf. J. MARTÍNEZ-TORRÓN, *La configuración jurídica de las prelaturas personales en el Concilio Vaticano II* (Pamplona 1986); for a more general history, cf. P. LOMBARDÍA-J. HERVADA, "Sobre prelaturas personales," in *Ius Canonicum* 27 (1987), pp. 11–76; J. HERVADA-W. STETSON, "Personal Prelatures from Vatican II to the new Code: an Hermeneutical Study of Canons 294–297," in *The Jurist* 45 (1985), pp. 379–418.

advisable: international seminaries, special dioceses, personal prelatures,[2] *et alia huiusmodi*. In the revision of the *CIC*/1917, regulations governing personal prelatures were dealt with, which concluded with the drafting of the present title with its four canons.[3]

While the historical precedents which encouraged Vatican Council II to undertake these modifications are already known, the final purpose of these new structures, among which are included personal prelatures, can be readily seen: pastoral needs (cf. c. 294). In effect, there were two concerns that had been demonstrated in the Church during the time subsequent to the *CIC* of 1917. On one hand, the unequal distribution of the clergy amongst the various dioceses was one reason for concern. While some had an abundance of clergy, others suffered from a noticeable lack. The need was felt for priests to become aware of the universal purpose of the mission received by the sacrament of orders and for revising the institute of incardination, in order to make it more flexible and suitable for the transfer of clergy between one diocese and another. It is appropriate to recall that number 10 of Decree *Presbyterorum ordinis* reflected this concern, beginning by emphasizing the universal dimensions of the mission of priests and afterwards proposing the reform of norms regarding incardination and excardination.[4]

On the other hand, also of concern was a problem different from the previous one: pastoral care given to social groups, which had very diverse characteristics and which required special pastoral care. For those cases, redistribution of the clergy was not sufficient, but rather, there was a need for specific pastoral structures and, in some cases, priests endowed with a special training; this was what was called *specialized pastoral care*.

The two problems should not be confused with one another. The lack of clergy in a diocese with few vocations was one thing, while the case of special pastoral projects was quite another. One was a question of the appropriate and fair distribution of the clergy in order to meet the *common* needs of the dioceses, while the other involved *specialized* pas-

2. For a basic bibliography on personal prelatures, cf. among others A. DE FUENMAYOR, *Escritos sobre prelaturas personales*, 2nd ed. (Pamplona 1992); J.L. GUTIÉRREZ, "De prælatura personali iuxta leges eius constitutivas et CIC normas," in *Periodica de Re Morali Canonica Liturgica* 72 (1983), pp. 71ff; G. LO CASTRO, *Le prelature personali. Profili giuridici*, 2nd ed. (Milan 1999) (French ed.: *Les prélatures personnelles. Aspects juridiques* (Brussels 1993); Spanish ed.: *Las prelaturas personales. Perfiles jurídicos* (Pamplona 1991)).

3. For an overview of the process of drafting of the canons currently in force, cf. J. HERVADA-W. STETSON, "Personal Prelatures...," cit.

4. "In addition, the rules about incardination and excardination should be revised in such a way that, while this ancient institution remains intact, it will answer better to the pastoral needs of today." Regarding the evolution of incardination, cf. J.M. RIBAS, *Incardinación y distribución del clero* (Pamplona 1971); J. HERRANZ, "El nuevo concepto de incardinación," in *Palabra* 1966, nos. 12–13, pp. 26ff; J. HERVADA, "La incardinación en la perspectiva conciliar," in *Ius Canonicum* 7 (1967), pp. 479ff; etc.

toral care for social groups which required—and still require—either a specialized pastoral organization (as in the case of sailors), or a specific type of pastoral approach (as occurred with the mission of France, which was directed towards very de-christianized sectors). For the first question, the Council provided a review of incardination; while the second was handled through special pastoral projects directed at diverse social groups.[5]

Personal prelatures were born, then, as new forms of organization of the constitutional structure of the Church.In addition to the forms already in existence (Pope, Episcopal College, Roman Curia, metropolitans, bishops, bishops' conferences, territorial prelatures, apostolic vicariates, etc.)—some essential and others historical[6]—new forms are incorporated (special personal dioceses, personal prelatures). The main feature of these new forms is their complementary role with respect to common and general pastoral and apostolic activity. This is accomplished by means of special pastoral and apostolic activity needed in certain territories or social groups. How should *opus pastorale peculiare* be understood? It is of vital importance to understand this expression correctly. The key to understanding its meaning is to be sought: a) in the pastoral needs which the Council Fathers had *in mente*, following the lead given by acts of the Holy See; and b) in the *potestas clavium*, i.e., the fact that this *opus pastorale* was to be a special way of carrying out the mission which Christ entrusted to the hierarchically constituted Church. Seen in this light, this notion should involve a particular characteristic, either of hierarchical pastoral activity (among whose features is included that of providing pastors of souls to all the faithful, through the proper distribution of the clergy) or of the activity of the whole Church which is to be performed through organic cooperation (cf. c. 296) between *clerus et plebs* (in other words, through the constitutional coordination of the common priesthood with the ministerial priesthood). This cannot involve merely actions incumbent upon the members of the faithful as such—the free initiative of the individual or of associations is there for that reason—or actions directed towards an individualized purpose (teaching, popular missions, divine worship, etc.) for which there exist associations of clergy or laypersons.

It may be inferred from the *process* (process) of council documents that the notion of *opus pastorale* concerned pastoral and apostolic activity of the ecclesiastical hierarchy—or of the hierarchy and the laity organically united—which, due to their special needs, could not be properly handled by pastoral structures in their common and ordinary forms of organization and implementation. Let us take note that "special" (*peculiaris*) is a contrastive term with respect to *common* or *ordinary* and,

5. *PO* 10 says: "Ubi vero rationale apostolatus postulaverit, faciliora reddantur non solum apta Presbyterorum distributio, sed etiam peculiaria opera pastoralia... Ad hoc ergo..."
6. Cf. INTERNATIONAL THEOLOGICAL COMMISSION, *Themata selecta de ecclesiologia* (Vatican City 1985), n. 5.1v.

consequently, is essentially relative. What is *common* in mission territories—missionary pastoral care—may be *special* in countries with a longstanding Christian tradition. For this reason, *special* has a multitude of shades of meaning, and, therefore, personal prelatures may take a rich variety of forms within a framework common to them all. When dealing with relative terms, what is special will depend on the common or ordinary form assumed by the apostolic actions of the hierarchy or of the organic cooperation of the hierarchy with the laity. What is decisive in personal prelatures is that they are intended to involve pastoral work inherent in the hierarchy (ministerial priesthood) or in the hierarchy and the faithful as a whole (ministerial priesthood and common priesthood, organically united), which has some special feature, such as the apostolic method, the organizational form or the sector of the mission of the hierarchy (or of the organic cooperation among the hierarchy and the faithful) which personal prelature serves. *The motivation for these structures is the inability of the common and ordinary forms of apostolic and pastoral activity to satisfy all people's needs. Thus, the mission and the subject are the same (the ordinary constitutional pastoral and apostolic structure of the Church), and the *special characteristic* changes only one aspect: the method, the sector that is being served, etc.

The basic text concerning personal prelatures in the legislation subsequent to Vatican II but before the *CIC*83 is from Paul VI, who established the fundamental juridical framework in the *Motu proprio Ecclesiae sanctæ* I, 4. In turn, the Apostolic Constitution *Regimini Ecclesiæ Universæ* highlighted the nature inherent in personal prelatures when in number 49, 1, it assigned to the Sacred Congregation for Bishops those matters pertaining to the erection of personal prelatures and the appointment of a prelate in the context of other structures of this kind: dioceses, provinces, ecclesiastical regions and military vicariates. The Apostolic Constitution *Pastor Bonus* (art. 80) preserved the assignment of this sphere of competence to the Congregation of Bishops.

2. *The nature of personal prelatures*

In our opinion, the position of personal prelatures in *CIC* suffers from a lack of systematicity. Their proper place would be among the institutions belonging to the hierarchical constitution of the Church. This is due to the fact that they are a specific and special form by means of which the hierarchy and the people of God are organized even though they are theologically and canonically different from particular Churches (cf. c. 297). In any event, the systematic ordering of a legislative body is always somewhat secondary, since the true nature of institutions is to be inferred from the substantive norms that govern them. Thus, in this case,

the four canons that define the essence of personal prelatures as drawn from the legislation of Paul VI have the last word.

The inclusion of personal prelatures in Part I *De Christifidelibus*, after the title devoted to the faithful (laity and clergy), makes it clear that they are not particular churches and that they are, strictly speaking, prelatic structures, i.e., they are public organizational forms of the people of God that are characterized by having a prelate or episcopal office as head. It is precisely the use of the concept of a prelature, of long-standing canonical tradition, which most clearly indicates within this context the *mens legislatoris* in regard to the nature of personal prelatures and in regard to their placement within the constitutional structure of the Church.[7]

As a result, personal prelatures may be either a unified body of *clerus-plebs* (hierarchy-laity) or a ministerial body of clerics. This was subsequently confirmed by c. 295 see commentary), which provided for the organic cooperation of the laity. Finally, cc. 294–297 contain significant clarifications and developments that illuminate the nature of such prelatures. Thus, for instance, singular importance is given to the statutes of each prelature, by virtue of the fact that they are not simply "approved" but rather "given" by the Apostolic See, which not only creates each prelature, but also confers upon it its special configuration (cf. c. 295 § 1). In addition, the statutes are the technical means provided for in the *CIC*, through which the Roman Pontiff determines for each prelature the manner in which its pastoral task is to be coordinated with that of the particular churches. It is also appropriate to point out the profoundly ecclesiological way in which the Council's teaching about the laity has been received in law, when it characterizes the possible participation of the latter in the pastoral work of the prelatures as *organica cooperatio* (see commentary on c. 296).

3. *The norms of the* CIC *as "framework" norms*

By examining the provisions set forth in *Ecclesiae sanctae* and in the *CIC* from this perspective, it can be inferred that personal prelatures constitute what might be called a *framework*, using a terminology that has already been introduced among jurists, types or figures. In this way, we wish to express that, together with certain basic features, personal prelatures may differ greatly amongst themselves. For this reason, the provisions in *ES* I, 4 and cc. 294–297 necessarily employ generic terms, about which it would be risky to attempt to infer what, in a particular and concrete sense,

7. For an historical study of the essential features of prelatures, cf. P. LOMBARDÍA-J. HERVADA, "Sobre prelaturas personales," cit.; J. HERVADA-W. STETSON, "Personal Prelatures...," cit.; J. MIRAS, *La noción canónica de "prælatus"* (Pamplona 1987); idem, *"Prælatus": de Trento a la primera codificación* (Pamplona 1998).

each personal prelature could be: one would have to refer to their statutes (cf. c. 295). Given this, the first principle of interpretation is thus emphasized: it would be a mistake to devise a *single* idea of all possible personal prelatures and to attempt to apply this model indistinctly to all of them. In fact, if one were told that a diocese had been established, one would know, down to the smallest detail, what its structure would be; on the other hand, if it were announced that a personal prelature had been established, this mere fact would only indicate certain general and basic characteristics. Other inferences about it would have to be drawn from the particular statutes.

Features common to all personal prelatures are as follows:

a) Above all, a personal prelature is a pastoral structure, secular in nature (cf. c. 294), aimed at undertaking a task of special pastoral care whose recipients are common and ordinary members of the faithful. Here is the first feature that warrants emphasis. Those to whom the pastoral work of a personal prelature is directed are common members of the faithful, ordinary Christians, in other words, those members of the faithful who do not fall into any special form of life or ecclesial condition: they are neither members of the religious, nor do they lead any kind of consecrated life, nor do they belong to an order, privileged class or group within the Church. They are *common* members of the faithful.

b) Prelatures are structures inherent in the ordinary ecclesiastical hierarchy or to the joint—organic—action of the latter with the laity (*clerus et plebs*). They are not outside the constitution of the Church and consequently, are forms of public organization of the Church. They indeed belong to human law, but they are not foreign to the constitution of the Church; they exist because there exists a universal dimension of the *ordo episcoporum*, which entails a universal dimension of the *ordo presbyterorum*. It is not necessary to insist on this. What is clear is that they are based on the constitutional law of the Church and that they form part of the ecclesiastical organization: they are structures of human law, which develop the hierarchical constitution of the Church (either clergy alone or *clerus et plebs*). As a result:

— The bonds of union are those belonging to entities of this nature: ecclesiastical jurisdiction, *communio* and *fraternitas christiana*.

— Their creation is incumbent upon the Holy See; their origin is not due to an act of will of those who create them.

c) Personal prelatures are not particular churches: they are analogous structures, with the analogy of proportionality, to the dioceses. In other words, they are similar to them insofar as their internal constitution is concerned (jurisdiction, bonds, etc.), but they differ in that they lack the mystery-sacrament *totality* inherent in particular churches.

d) The mission that they carry out is part of the mission of the hierarchy or of the hierarchy and laity together (of the *populus Dei*). Since their purpose is that of *specialized* pastoral activity, they are compatible in all respects with the common pastoral activity of the diocesan bishops, whose jurisdictional powers they respect in their entirety (cf. c. 297).

In order for them to be understood properly, it is probably at this point that the innovation represented by personal prelatures requires that one detach oneself from certain erroneous historical conceptions which appear among the ideas that some canonists have entertained concerning prelatures. For a long time, the only prelatures known by canon law were *nullius* prelatures (now called "territorial prelatures" in the *CIC*) i.e., territories with a prelate which were separate from dioceses. These were either dioceses in formation (not yet complete) or territories outside episcopal jurisdiction. Since there exist personal dioceses as well as territorial dioceses (which are in the majority), some authors believed that the same thing would happen with prelatures: some would be territorial, while others would be personal, but all were *exempt* in regard to diocesan bishops. This is a misunderstanding which must be rectified. The personal prelatures created by Vatican II are different from previously existing prelatures, because by their very nature they are not exempt. (In reality, this exemption is not applicable to prelatures, whether personal or territorial; their autonomy is a phenomenon of a very different nature.) This is so because the pastoral task of personal prelatures does not interfere with the work of the diocesan bishop, but rather plays a complementary role of strengthening and assisting the common pastoral care of the local ordinaries[8] (see commentary on c. 297).

8. JOHN PAUL II, in his *Discourse* on March 17, 2001, referring both to the first established personal prelature and to the figure of the personal prelature in general, emphasized this aspect with other essential features of this juridical form (cf. the original text of the *Discourse* in *L'Osservatore Romano*, March 18, 2001; English translation in *L'Osservatore Romano*, Weekly Edition, March 28, 2001, p. 6).

294 **Ad aptam presbyterorum distributionem promovendam aut ad peculiaria opera pastoralia vel missionalia pro variis regionibus aut diversis coetibus socialibus perficienda, prælaturæ personales quæ presbyteris et diaconis cleri sæcularis constent, ab Apostolica Sede, auditis quarum interest Episcoporum conferentiis, erigi possunt.**

Personal prelatures may be established by the Apostolic See after consultation with the Bishops' Conferences concerned. They are composed of deacons and priests of the secular clergy. Their purpose is to promote an appropriate distribution of priests, or to carry out special pastoral or missionary enterprises in different regions or for different social groups.

SOURCES: *PO* 10; *ES* I, 4; *REU* 49 § 1; SCB Instr. *Nemo est*, 22 Aug. 1969, 16 § 3 (*AAS* [1969] 621); *DPMB* 172

CROSS REFERENCES: c. 372 § 2

COMMENTARY

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The present canon begins by pointing out the distinct purposes which should be pursued by the setting up of a personal prelature (see introduction to Title IV). We are focusing now on two concrete aspects contained in this norm: the authority competent to establish a personal prelature and the limitation of this juridical figure to the secular clergy, which make up the presbyterium of the prelature.

1. *Establishment by the Apostolic See, after consultation with the bishops' conferences concerned*

Presbyterorum ordinis 10 established that personal prelatures could be established, "always saving the right of bishops ... for the good of the whole Church." Canon 294 specifies in part these instructions of the Council, when it prescribed the participation of the bishops' conferences concerned (also cf. PB 26), which must be consulted before establishing a personal prelature: in this way, it was verified *ad casum*, at a time prior to creation, that the rights of the local ordinaries were to be safeguarded. The norms set forth in c. 297 are directed towards this same purpose, inso-

far as the beginning of the activity of a prelature within a given particular church is concerned (see commentary on c. 297).

In addition, prelatures are public forms of pastoral organization of the people of God, that is, ecclesial bodies whose structure is based on the constitution of the Church and, as a result, are organized *hierarchically*, according to the double hierarchy of order and jurisdiction. As a result, competence for their creation can only devolve upon the supreme authority, as happens in the case of other ecclesiastical circumscriptions (cf. *PB* 76 and 80).

In this regard, it is important not to lose sight of the reason for which these structures should be established, as expressed in *Presbyterorum ordinis* as being *"in bonum commune totius ecclesiæ."* By adding the adjective *totius* to the expression *common good of the Church*, the Council emphasizes that it should not be taken in a generic sense—all juridical norms have the common good as their end—but rather that such institutions affect the universal Church in one way or another. Consequently, these structures are not fostered for the *particular* common good of a *cœtus personarum* of certain dioceses, of a nation or a region, but should instead have a relationship to the universal Church. The particular common good will be handled by means of other institutions. Therefore, the role of the Holy See is decisive in the creation of these structures.

This does not mean that all personal prelatures will necessarily have a universal scope; rather, it means that pastoral work is part of the pastoral activity of that structure of the Church to which Christ entrusted the good of the entire Church: the ordinary hierarchy, Peter and the Apostles, i.e., the Pope and the Episcopal College.[1] To them is entrusted the *bonum commune totius ecclesiæ*, insofar as they form a unity or *ordo*. Personal prelatures, just like territorial prelatures, are directly linked with the office of Peter, from whom proceeds the *prelatic quasi-episcopal jurisdictio* inherent in them. From this emerges the clear sense of their orientation towards the good of *totius ecclesiæ*, of which the only repositories are the ordinary ecclesiastical hierarchy (Pope and bishops) and the Christian people, insofar as they are *Ecclesia Universa* (and therefore linked to the ecclesiastic hierarchy, each in his own way).

1. For instance, the Post-Synodal Apostolic Exhortation *Ecclesia in America*, of January 22, 1999, says in no. 65: "Migrants should be met with a hospitable and welcoming attitude which can encourage them to become part of the Church's life, always with due regard for their freedom and their specific cultural identity. Cooperation among the dioceses from which they come and those in which they settle is very important to this end, through specific pastoral structures provided for in the legislation and practice of the Church." In addition, the document quoted cites in no. 237 c. 294, and also cc. 518 *CIC* and c. 280 *CCEO*, which refer to the possibility of establishing personal parishes.

2. *Composition of personal prelatures*

The purpose of the sentence "they are composed of deacons and priests of the secular clergy" is obviously not to describe the composition of a personal prelature exhaustively, but rather to indicate that it involves, in all cases, a structure which is proper to the secular clergy, as it belongs to the very structures of ecclesiastical organization. In reality, the structural elements are discussed in the following canons: the prelate and the clergy belonging to it (cf. c. 295) and, if applicable, the lay faithful bound to the prelature (cf. c. 296).

In a personal prelature priests make up a presbyterium that possesses the same features in its internal structure as that of a diocese. The subject of presbyteria comes into play here, which may be the source of misunderstandings, if we do not distinguish clearly between the mystery-sacrament structure of a particular church and the juridical formulas which the organization of a particular church adopts when considered in itself and when seen in relation to the universal Church.

A particular church—or local church if its demarcation is done on the basis of territorial criteria—is, above all, a mysterious reality, whose center is the eucharistic celebration. At the head of the particular church—when it is complete, i.e., we are not referring here to territorial prelatures or abbacies, vicariates apostolic, etc., which raise certain theological issues that are not pertinent here—is a member of the Episcopal College, successor to the Apostles, in other words, a bishop or supreme priest of the New Law, who has the fullness of the functions of proclaiming the Word, governing the faithful and celebrating the Eucharist, as well as administering the other sacraments and means of sanctification (this fullness must obviously be coordinated with the functions and powers of the Roman Pontiff and the Episcopal College).

The bishop is assisted in his functions by priests ordinis Episcopalis providi cooperatores eiusque adiutorium et organum," who "unum presbyterium cum suo Episcopo constituunt," as *Lumen gentium* 28 says. Do the expressions "a single presbyterium" and "his Bishop" refer solely to priests incardinated in the diocese? The affirmative answer proposed by some authors suggests that the mystery-sacrament and the organizational levels are confused. In its full mystery-sacrament sense, all priests who, either permanently or potentially, exercise their ministry within the territory of a diocese—it is understood with authorization and, therefore, in communion with the bishop—are acting in cooperation with the diocesan bishop, who, on that level, is *their bishop*. It could not be otherwise, if we bear in mind that the mystery-sacrament level, which also has a juridical dimension, operates in relation to the sacrament of orders, and the functions which this sacrament confers are, in and of themselves, universal. (For the bishops, this is clear, from the time in which they are incorporated into the Episcopal College through the sacrament of the episcopate,

which is of a universal dimension insofar as priests are concerned. Cf. *PO* 10) When this universality of the particular churches—"in quibus et ex quibus una et unica Ecclesia catholica exsistit" (*LG* 23; c. 368)—is manifested through their distinct organizational formulas, the mystery-sacrament level is configured in them as a concrete manifestation of the universal. In each of them, "vere inest et operatur Una Sancta Catholica et Apostolica Christi Ecclesia" (*CD* 11; c. 369). Consequently, whatever is done in a particular church is done according to this specific manifestation of the universal. In the particular church there is only one supreme priest, the diocesan bishop. All presbyteral actions refer back to him as cooperation and assistance, and all presbyters who lawfully exercise their ministry in the particular church form his "presbyterium."

Something different—although bearing a necessary relationship to the above-mentioned level—is the *ecclesiastical organization* of these ministries, which is determined by multiple factors among which, first and foremost, is the action of the Holy Spirit, who promotes distinct organizational formulas. From a juridical-organizational point of view, the relationship of a priest in regard to the diocesan bishop in whose diocese he exercises his ministry may be diverse: incardination, admission through agreement among bishops, authorization to exercise his ministry, etc. It is in this context that the juridical-organizational concept of "presbyterium" is born, which should not be confused with the concept referred to above. A presbyterium in the strict juridical-organizational sense may be made up only of clerics incardinated or devoted in a stable manner to the performance of an office on behalf of the diocese or pastoral structure in question. This term is used in the latter sense when, within the context of personal prelatures, we speak about a presbyterium, together with a prelate. In this sense a priest may belong, although with distinct juridical forms, to two presbyteria.

295 **§ 1. Prælatura personalis regitur statutis ab Apostolica Sede conditis eique præficitur Prælatus ut Ordinarius proprius, ciu ius est nationale vel internationale seminarium erigere necnon alumnos incardinare, eosque titulo servitii prælaturæ ad ordines promovere.**

§ 2. Prælatus prospicere debet sive spirituali institutioni illorum, quos titulo prædicto promoverit, siveeorundem decoræ sustentationi.

§ 1. A personal prelature is governed by statutes laid down by the Apostolic See. It is presided over by a Prelate as its proper Ordinary. He has the right to establish a national or an international seminary, and to incardinate students and promote them to orders with the title of service of the prelature.

§ 2. The Prelate must provide both for the spiritual formation of those whom he has promoted with the above title, and for their becoming support.

SOURCES: § 1: *ES* I, 4; *REU* 49 § 1; SCB Instr. *Nemo est*, 22 Aug. 1969, 16 § 3 (*AAS* [1969] 621)
§ 2: *ES* I, 4

CROSS REFERENCES: cc. 7–22, 94 § 3, 131, 134, 232–264, 265, 266 § 1, 279, 281

COMMENTARY

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The statutes or particular law of personal prelatures differ formally (c. 94 § 3) from those that pertain to associations: in fact, in the case of a personal prelature, it is the Holy See which hands down and establishes this law ("statutis ab Apostolica Sede conditis"), while the norms by which associations are governed originate in themselves and only require, at most, approval from the competent authority (cf. cc. 299, 304, 310, 314, 322). This difference is due precisely to the fact that the personal prelatures are not associations but structures within the ecclesiastical organization. Therefore, each personal prelature owes its existence not to the will of its possible members, but rather to an act of the Apostolic See by which it is established (cf. c. 294).

This pontifical act is unlike the approval or the *recognitio* of the prior activity of the members of an association giving rise to its establishment as a juridical person. It is rather an act of establishment by virtue of which the prelature comes into existence, endowed with its own norms of particular law, which have the status of pontifical law (cf. c. 94 § 3), and which, therefore, follow the precepts pertaining to laws in general (cc. 7 22).

Thus, the essential juridical system of governance of each personal prelature will consist of the general norms contained in this title, which comprise the basic legislative framework, together with all the general norms of the *CIC* that may be applicable to each subject matter, in addition to the particular norms included in the statutes. By means of the latter, the Apostolic See shapes the general institution governed by the Code, endowed with certain specific features, depending on the pastoral task for which each personal prelature was established. Furthermore, it provides in each case for the coordination of this pastoral activity with the particular churches in which this particular activity is to be implemented (cf. c. 297).

The prelate, ordinary proper and the clergy of the prelature

Characterization of the ordinary proper of the prelature has been assigned to the prelate, by means of which the enumeration given in c. 134 § 1 is extended on the basis of this canon and is clearly not intended to be exhaustive, according to the most common interpretation among authors in the field.[1]

The prelate, chief governing office of the prelature, clearly possesses the power needed to exercise his function, although its content may not be exhaustively developed within the bare framework of the present canon, which, in turn, must be fleshed out more fully by particular law in each case. The canon expressly mentions the power to establish a national or international seminary for the training of candidates to the priesthood, who will be ordained *titulo servitii praelaturæ*, and the power to incardinate these students (cf. cc. 265, 266 § 1), who, once ordained, will constitute the clergy of the prelature (cf. c. 294). From the incardination of these clerics arise the general obligations expressed in § 2 towards the prelate, which express in explicit form those precepts already enunciated in a general way in c. 279 and 281.

Priests remain bound to the prelate and the prelature through incardination and the title of service of the prelature. This is a historical con-

1. Cf., e.g., J.I. ARRIETA, *Governance Structures within the Catholic Church* (Montreal-Chicago 2000), pp. 60 and 183; W. AYMANS-K. MÖRSDORF, *Kanonisches Recht. Lehrbuch aufgrund des Codex Iuris Canonici*, I (Paderborn 1991), p. 183.

cept which the *CIC* maintains in this canon, although, due to the reforms of incardination, the title of ordination has lost its meaning; incardination is, in and of itself, a bond of service. These priests are joined together through priestly fraternity and through mutual cooperation with the prelate in carrying out the *munus pastorale*, in accordance with the sacrament that they have received which leads them to participate in the mission of the *ordo Episcoporum* (cf. *LG* 28; *PO* 7–9). They are bound to the prelature through these same bonds of subordination, co-responsibility and cooperation which joint priests incardinated in a diocese to each other and to their bishop. They thus constitute a presbyterium whose internal structure is identical to that of the presbyterium in a diocese (see commentary on c. 294).

296 Conventionibus cum prælatura initis, laici operibus apostolicis prælaturae personalis sese dedicare possunt; modus vero huius organicæ cooperationis atque præcipua officia et iura cum illa coniuncta in statutis apte determinentur.

Lay people can dedicate themselves to the apostolic work of a personal prelature by way of agreements made with the prelature. The manner of this organic cooperation and the principal obligations and rights associated with it, are to be duly defined in the statutes.

SOURCES: *ES* I, 4

CROSS REFERENCES: cc. 208, 1290

COMMENTARY

Javier Hervada

For a correct interpretation of this canon, it seems essential to point out that a view of personal prelatures which presents them exclusively as an instrument for the better distribution of the clergy (cf. c. 294) would be incomplete and highly inconsistent with the norms currently in effect. The relationship between the laity (*populus christianorum*) and a personal prelature may take several forms, but in no case do we refer to a body of lay faithful as separated from a diocese or removed from the jurisdiction of the diocesan bishop. This is one of the essential features of personal prelatures.[1]

If we examine the texts of the Council and those of Paul VI in the *Motu proprio Ecclesiæ Sanctæ*, as well as the canons in the Code, it becomes clear that two types of relationship can occur: the laity may be either simple recipients of the pastoral ministry of the prelature or active co-participants in this pastoral work.

1. *The faithful as intended recipients of the "munus pastorale" of a prelature*

In the first case, the prelature may carry out its pastoral activity among the faithful in accordance with various formulas of cooperation

1. Cf. in this regard, JOHN PAUL II, *Discourse* of March 17, 2001, (cf. the original text of the *Discourse* in *L'Osservatore Romano*, March 18, 2001, p. 6; English translation in *L'Osservatore Romano*, Weekly Edition, March 28, 2001, p. 6); *Communionis notio*, 16.

and relations that have been agreed upon with the local ordinary (cf. c. 297). Specifying the faithful or social groups on behalf of whom the prelate will exercise his pastoral mission will be established *a iure* for each prelature, in accordance with their specific pastoral or missionary activity. These members of the faithful, insofar as they are recipients of the pastoral ministry of the personal prelature, may in turn be in two different positions in regard to the prelature:

a) In the first place, they may be related *a iure* to the prelature and may be under the jurisdiction of the prelate, for the purposes of the latter's special pastoral mission, in the same manner as the faithful of a diocese, through the bonds inherent in *communio*. *Communio* is an organic structure which requires a juridical form and which implies subordination to the jurisdiction of the prelate, a mutual relationship between the common priesthood and the ministerial priesthood, a sense of joint responsibility among all the faithful (prelate, clergy and the laity), directed towards the purposes of the prelature, and the bonds of Christian fraternity among everyone. In prelatures of this type, no bond is given other than that of *communio ecclesiastica*, in other words, the same bond uniting the clergy and the laity in a diocese.

b) In other cases, these members of the faithful may fall within the scope of the pastoral activities of a personal prelature without having any bond whatsoever with it: the relationship, then, is limited to the right of the faithful to make free use of the means placed at their disposal by the prelature. All members of the faithful possess a fundamental right to choose the types of pastoral assistance which they prefer (cf. cc. 213 and 214). In this case, there does not exist any bond other than what is inherent in their condition as members of the people of God.

2. *The faithful as co-participants in the* "munus pastorale" *of a prelature*

So far we have been examining the issue solely from the viewpoint of the faithful as mere beneficiaries of the pastoral activities of the prelature. But this is now insufficient, since the Council has stressed the active role of laypersons in the mission of the Church. The Church is not only the hierarchy (bishops, priests and deacons), with the laity as beneficiaries of the activities of the hierarchy and subject to it. Rather, the Church is the entire people of God, in which all members in accordance with their own condition (clerical or lay) are jointly responsible for the saving mission of the Church. A diocese is a *portio populi Dei*, which constitutes a unified whole consisting of a bishop, clerics and the laity, all of whom are jointly responsible for their mission. A similar situation occurs with regard to territorial prelatures. Is the case of the personal prelature different in this respect? The answer is clearly no. Except in the case of prelatures which do not have a direct mission in regard to the faithful (in other words, those

which have been created exclusively for the distribution of the clergy), there is no reason whatsoever to consider personal prelatures as an exclusively clerical phenomenon. As we have seen, in the case of those members of the faithful who are connected to personal prelatures for purposes of pastoral care, active participation is based on the bond of *communio*, which implies joint responsibility. By its very nature, a prelature of this type is not a clerical structure, but rather a unified whole composed of the two-sided relation between *clerus* and *plebs*.

In the case of prelatures with a special pastoral mission which are not composed of members of the faithful directly bound to it *ex iure*, nothing prevents laypersons from active incorporation, since this type of prelature, by virtue of its own constitutional law, is called to be a structure composed of a unified body made of *clerus* and *plebs*. It is also called to be an ecclesial organization to which the Apostolic See entrusts a *munus pastorale*, which is to be carried out through the organically structured cooperation of the common priesthood and the ministerial priesthood.[2]

a) *The* Motu propio "Ecclesiæ sanctæ"

In effect, *Ecclesiae sanctae* open up the possibility for laypersons to devote themselves to tasks inherent in the prelature through contract or commitment. It is true that this possibility is not referred to in *Presbyterorum ordinis* 10, but in actual fact it does not involve anything more than an application of no. 22 of the Decree *Apostolicam actuositatem*: "Worthy of special respect and praise in the Church are the laity, single or married, who, in a definitive way or for a period, put their person and their professional competence at the service of institutions and their activities." By means of this provision, the Council did nothing more than adopt what already existed in various pastoral and missionary projects: the phenomenon of laypersons, including people who were married, who were devoting themselves, for a limited period of time or permanently, to the service of pastoral or missionary structures on a contractual basis. Thus, the inclusion of the laity as active members of personal prelatures—just as they are also active in dioceses and other prelatures—while involving a new element, is not new at all within the spirit of the overall body of council documents.

The formula with which *Ecclesiae sanctae* paved the way represented a significant progress: "Nihil impedit quominus laici, sive cælibes sive matrimonio iuncti, conventionibus cum Prælatura initis, huius operum et inceptorum servitio, sua peritia professionali, sese dedicent." Through this formula, it was clearly established that, as in the case of dioceses—both normal or special—and territorial prelatures, the apostolic

2. Cf. *LG* 9 and 33; *AA* 2. Also cf. E. Corecco, "Riflessione giuridico-istituzionale su sacerdozio comune e sacerdozio ministeriale," in *Popolo di Dio e Sacerdozio* (Padova 1983), pp. 80–129.

work inherent in personal prelatures can also be the fruit of the organic and complementary cooperation of the common priesthood of the faithful and the ministerial priesthood of the clergy. The two-sided relation between *clerus et plebs may* occur here, although it is not a necessary element; and personal prelatures therefore represent a structure of the *populus christianus* or *populus Dei*, with the consequent hierarchical structure.

It should be pointed out that the expression *sese dedicent*—to which we will return later on—means, properly speaking, an act of dedication, ecclesial in nature, an act of commitment to devote oneself to works inherent in the prelature. We are not speaking here of a service contract of a professional type. Indeed, the phrase *sua peritia professionali* contained in the text of *Ecclesiae sanctae* might be interpreted as restricting the participation of the laity to very concrete matters and in very specific cases. (Thus, for example, if a prelature in missionary lands found it appropriate, in exercising the *ministerium caritatis* inherent in the Church, to establish hospitals, it might employ healthcare personnel: physicians, nurses, etc.). This is the basis for the interpretation that some authors have given to the cooperation of laypersons in personal prelatures as assistants to the clergy and proportionately fewer in number in comparison with the priests. However, this would represent an excessive restriction on the participation of laypersons in personal prelatures, in contrast to what is implied by the overall body of council doctrine about the active participation of the laity in the Church and in the world, and it does not seem that such an intention should be attributed to the *Motu proprio Ecclesiæ sanctæ*. Rather it seems that this provision is an attempt to point out that the laity are not incorporated into prelatures *more clericali*, but instead *more plene sæculari*, so that the service they render must be understood as performed with a lay and, consequently, professional mentality. In any event, the phrase in question should in no case be understood to mean that laypersons incorporated into a prelature should be fewer in number than clerics or, on top of that, as their assistants. This restrictive interpretation is but one more example of the difficulties one meets in attempting to understand ecclesiastical structures as structures of the people of God—*clerus et plebs*—and not merely as structures of the hierarchy. In fact, the text of c. 296 does not include this phrase.

b) "*Cooperatio organica*"

At this point, it is appropriate to ask what *cooperatio organica*, as discussed in c. 296, means. In the language of Vatican II and the *CIC*, the word "cooperation" is frequently used to designate the participation of each person in accordance with his condition, in other words, the clergy as clergy and lay men and women as laypersons (cf. c. 208). The addition of the adjective *organica* suggests that this involves a living relationship (cf. *CD* 23),[3] which involves each person according to his or her own ecclesial condition. Consistent with this, laypersons may be incorporated

into personal prelatures as jointly responsible, on an equal footing, for the purpose for which the prelature was intended and its special pastoral activity. In this case, what is involved, then, is a *cooperatio organica* which makes them members of the prelature and jointly responsible for attaining its goals (this is the case insofar as the first personal prelature to be created is concerned).[4] Obviously, laypersons are barred from those offices and ministries for which the sacrament of orders is required: prelate, vicar general, and other vicars of the prelate, as well as the specific priestly function of acting as a pastor for souls through the sacrament of penance. In other words, this joint responsibility does not fall on everyone in an undifferentiated manner, but rather, according to the demands of the organic nature of the prelature. Priests cooperate by means of their ministry, laypersons by means of their lay apostolate, and both act jointly through the organic cooperation among the ministerial priesthood and the common priesthood, this cooperation implying the active participation of laypersons in pastoral activity, in accordance with the faculties which they possess by virtue of their active condition.[5]

c) *Necessity of an agreement with a prelature*

It is appropriate, then, to ask why this act of bilateral commitment or *conventio* is required. The answer is simple. The act of creating personal prelatures, which are intended to carry out their activity in different dioceses, determines the *recipients* of their apostolic work, the *populus* insofar as it is the recipient of that apostolic activity (and which, as such, is the *populus* of the diocese). But it cannot determine the *populus* insofar as it is an active element, since this commitment goes beyond the common obligations which each member of the faithful assumes through baptism: this cooperation exists as a possibility within the baptismal vocation, but it is not a juridical duty. As a result, a voluntary act of incorporation into the prelature is needed. This act is bilateral, since an act of acceptance on the part of the prelature should reflect an act of commitment made by the faithful, with both parties assuming mutual obligations in accordance with the provisions established in the statutes and in the common law. Fundamentally, the agreement of the laity, and the subsequent juridical bond to a personal prelature is a *commitment to the apostolic work inherent in that prelature.* This can be clearly inferred from the *Motu proprio Ec-*

3. Cf., e.g., J. HERVADA, "Aspetti della struttura giuridica dell'Opus Dei," in *Il diritto ecclesiastico e rassegna di diritto matrimoniale* 97 (1986), pp. 410–430; Spanish trans. in *Fidelium Iura* (under the old title *Lex Nova)* 1 (1991), pp. 301–322.

4. With regard to the faithful in general, cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia,* 3rd ed. (Pamplona 1991); (English ed., corresponding to the 1st Spanish edition: *Faithful and Laity in the Church* (Shanon1972); JOHN PAUL II traced the sense and dynamic of this organic cooperation with great precision in his *Discourse* of March 17, 2001, cit.

5. Cf. JOHN PAUL II, *Discourse* of March 17, 2001, (cf. the original text of the *Discourse* in *L'Osservatore Romano*, March 18, 2001, p. 6; English translation in *L'Osservatore Romano,* Weekly Edition, March 28, 2001, p. 6)

clesiœ sanctœ, and a similar sense of agreement or pact is reflected in c. 296.

It is difficult to understand the meaning and nature of this contract if one fails to perceive the nuance of meaning in the official Latin text, which appears in the *Motu proprio Ecclesiœ sanctœ* as well as in the present canon but which tends to be lost in some translations. Both documents cited use the construction *sese dedicent.* This expression indicates that it does not involve a mere service contract or work agreement but rather that it contains a spiritual and ascetical feature, which is essential. It entails a personal *commitment*, a serious and firm decision to respond to the Christian vocation of commitment to serving others, in this case a commitment to devoting oneself to the apostolic works inherent in the prelature. In essence, this involves a juridical obligation, ascetical in origin, to devote time—whether fully or partially, as indicated in the statutes of each prelature—to the apostolic activity of the prelature. In this sense, what might be devotion of good will *ad libitum* is transformed into an obligation of justice of a serious and specific nature.

d) *Nature of the faithful's bond with the prelature*

However, the existence of this agreement does not mean that the bond with the prelate and with the prelature is a juridical relationship, supported by the will of the parties, from which mutual rights and obligations are derived, as occurs in the case of voluntary associations. A prelature is a structure created by the Apostolic See (c 294). The prelate also receives his jurisdiction for the *munus pastorale* from the Holy See (c. 295). The act of creation establishes the presbyterium and the bonds between the prelate and the clergy, and between them and the laity. In addition, this same act establishes and configures the juridical position of the laity and their participation in the *munus pastorale* of the prelature. Thus, the overall juridical structure of each prelature is based on the common law of the Church and on the particular law given to each, and not on the will of those who are bound to it.

Given that personal prelatures are forms of constitutional structures of the Church, created by human law, the bonds which comprise them are those inherent in this constitutional structure: *communio*, which should be understood as an organic unity that may include elements ranging from the bond of submission to the prelate up to the relationship of joint responsibility intended for the specific purposes of the prelature. The bonds of the faithful associated with the prelature are of the same nature (although different in scope) as those inherent in other pastoral structures rooted in the constitution of the Church, and they constitute a particular form of *communio*.

297 **Statuta pariter definiant rationes prælaturæ personalis cum Ordinariis locorum, in quorum Ecclesiis particularibus ipsa prælatura sua opera pastoralia vel missionalia, prævio consensu Episcopi diœcesani, exercet vel exercere desiderat.**

The statutes are likewise to define the relationships of the prelature with the local Ordinaries in whose particular Churches the prelature, with the prior consent of the diocesan Bishop, exercises or wishes to exercise its pastoral or missionary activity.

SOURCES: *SCCong* Decr. *Ad consulendum*, 21 mar. 1964; *PO* 10; *ES* I, 4; SCB Decr. *Ad consulendum*, 11 mar. 1975

CROSS REFERENCES: —

COMMENTARY

Javier Hervada

1. *Safeguarding the rights of the local ordinary*

The present canon specifically attributes to the diocesan bishop the consent needed for a personal prelature that has already been set up to begin to exercise its pastoral or missionary task in a particular church. (The participation of the bishops concerned, through the bishops' conferences, prior to the creation of each prelature, is governed by c. 294.) It also ascribes the regulation of relations with the local ordinary where the prelature is present to the precepts contained in the statutes of each prelature (cf. c. 295). The provisions established by Vatican Council II are thus made specific. In this respect, *Presbyterorum ordinis* 10 adds that each of the new pastoral structures will be endowed with regulations on a case-by-case basis (normally statutes), *salvis semper iuribus ordinariorum locorum.* While the literal language of this phrase may suggest a "defensive" stance, the intention of the Council is not to add a note of caution on behalf of the rights of the respective local ordinaries, but rather to point out a characteristic feature of these new pastoral structures. In regard to this last point, it is appropriate to point out the essential differences between the personal prelatures and the territorial prelatures referred to in c. 370. It could be potentially confusing for instance to draw a parallel between the two structures such that personal prelatures are to territorial prelatures what personal dioceses are to territorial dioceses. Personal prelatures can be partially distinguished from territorial prelatures, since,

while the latter *separates out* the members of the faithful and the clergy from a diocese to constitute a *cœtus* assimilated to the diocese (c. 368), personal prelatures leave the bond of the faithful unaltered in regard to the diocese as one of their characteristic features; and, insofar as the clergy are concerned, while they depend upon the prelate in terms of jurisdiction, their task also involves a dimension of priestly cooperation with the head of the particular church.

This does not involve applying an exemption to social groups which require specialized pastoral attention, but rather that, while those persons who comprise such social groups retain the same juridical situation which they possessed in regard to their diocesan bishops, the potential for pastoral action is activated in them—and, as a result, the apostolic activity of each diocese is promoted—through the attention offered by the special pastoral activity of the prelature.[1] Therefore, these pastoral activities must not infringe on ordinary and common pastoral function which the diocesan bishop exercises over his faithful by virtue of the law: the diocesan bishop maintains—in regard to personal prelatures—his whole jurisdiction and ordinary *cura animarum* over those among his diocesan subjects who are also the subjects of the apostolic activity of the personal prelature.

2. *For the common good of the entire Church*

Several highly significant words close the description of the new pastoral structures in the council decree cited above: *in bonum commune totius ecclesiæ*. For a canonist and theologian, these words convey a very precise meaning: they do not involve creating situations of privilege *in bonum privatorum*, but rather measures promoting the common good of the Church (see commentary on c. 294). In this way, then, the statutes may come to constitute a particular law, but not a privilege *in commodum privatorum*. In this sense, a personal prelature may not be interpreted as a privileged jurisdiction or as a privilege for the social groups receiving its specialized pastoral attention. Specialized pastoral activity is a need that relates to the common good of the Church and to the rights of the faithful.[2] Naturally, the fact that something relates to the common good of the Church does not mean that it exerts an influence over the entire scope of

1. Regarding this question, also cf. J.L. GUTIÉRREZ, "De prælatura personali iuxta leges eius constitutivas et Codicis Iuris Canonici normas," in *Periodica* 72 (1983), pp. 107–108.

2. Cf., e.g., A. DEL PORTILLO, *Fieles y laicos en la Iglesia*, 3rd ed. (Pamplona 1991), pp. 84ff and 206ff (English ed., corresponding to the 1st Spanish edition: *Faithful and Laity in the Church* (Shanon1972), pp. 41ff and 115ff); P. LOMBARDÍA, "Los laicos en el Derecho de la Iglesia," in *Ius Canonicum* 6 (1966), pp. 355ff.

the universal Church; rather it means that, when an improvement occurs in Christian life and in the pastoral attention of certain social groups with the attendant promotion of the apostolate, this improvement redounds to the benefit of the entire Church, united through the bonds of communion and forming the one mystical body of Christ.

TITULUS V
De christifidelium consociationibus

TITLE V
Associations of Christ's Faithful

INTRODUCTION

Luis Felipe Navarro

This title regulates associations of the faithful: entities that, enjoying a multi-secular tradition in the Church (they have existed since the first centuries[1]) have at present acquired special importance as channels for participation by the faithful in the mission of the Church because of their variety of forms as well as the pastoral influence. One could call it "a new era of associations" (*CL* 29). Scientific doctrine, sensitive to this reality, has dedicated extensive attention to the study of associations of the faithful.[2] The International Congress of Canon Law held in Munich in 1987, fully dedicated to this subject, constitutes significant evidence of this interest.[3]

1. Although institutes of consecrated life and societies of apostolic life belong to the category of associations (even during some phase of the

1. Cf. J. CREUSEN, "Associations pieuses," in *Dictionnaire de Droit canonique*, vol. I (Paris 1935), col. 1272ff; A. GARCÍA GARCÍA, "Significación del elemento asociativo en la historia del derecho de la Iglesia," in W. AYMANS-K.T. GERINGER-H. SCHMITZ (Eds.), *Das konsoziative Element in der Kirche. Akten des VI. internationalen Kongresses für kanonisches Recht, München, 14.–19. September 1987* (St. Ottilien 1989), pp. 30ff; idem, "El asociacionismo en la historia de la Iglesia y en el ordenamiento canónico," in *Asociaciones canónicas de fieles. Simposio celebrado en Salamanca* (Salamanca 1987), pp. 34ff; W. ONCLIN, "Principia generalia de fidelium associationibus," in *Apollinaris* 36 (1963), pp. 68ff; and J. AMOS, "A Legal History of Associations of the Christian Faithful," in *Studia canonica* 21 (1987) pp. 273ff.

2. Cf. A. DÍAZ DÍAZ, *Derecho fundamental de asociación en la Iglesia* (Pamplona 1972); L. MARTÍNEZ SISTACH, *El derecho de asociación en la Iglesia* (Barcelona 1973); idem, *Las asociaciones de fieles*, 2nd ed. (Barcelona 1987); J. AMOS, *Associations of the Christian Faithful in the 1983 Code of Canon Law: a Canonical Analysis and Evaluation* (Washington 1986); W. SCHULZ, *Der neue Codex und die kirchliche Vereine* (Paderborn 1986); W. AYMANS, *Kirchliche Vereinigungen* (Paderborn 1988); and L. NAVARRO, *Diritto di associazione e associazioni di fedeli* (Milan 1991).

3. Cf. W. AYMANS-K.T. GERINGER-H. SCHMITZ (Eds.), *Das konsoziative Element...*, cit.

drafting of the Code, they were discussed in the same part of the Code)[4] by virtue of their peculiar characteristics, given the significance they have acquired throughout the history of the Church, they enjoy specific juridical regulations (cf. part III of book II), different from associations of the faithful.

Among the characteristics of institutes of consecrated life, all of their members, through public profession of evangelical counsels, assume a stable form of living, are dedicated to God by a new title, and bear public witness that foretells heavenly glory (cf. c. 573 § 1). In the societies of apostolic life, the essential element that defines them is that their members live their lives in common (cf. c. 731).

2. Unlike what occurred in the norms of the *CIC*/1917 (cf. cc. 684ff), the discipline and typology in this area became inadequate to provide for the phenomena of associations which arose before and after its promulgation.[5] The current legislation of the Latin Church is characterized, as was the desire of the drafters, by an organization of norms allowing ample space for subsequent manifestations of particular law and statutes, thereby allowing them to be adapted to the large variety of associations of the faithful. This option is fundamentally an answer to the demands resulting from the acknowledgment and proclamation of the right of the faithful to associate: the norms regulating their exercise must respect the basic content of this right, constitute an adequate avenue for its possibilities of manifestation and, lastly, be interpreted in the light of this right. The norms of this title allow for the existence of associations that are varied in their objectives (cf. c. 298 § 1), in their membership (clergy, laypersons, members of institutes of consecrated life); in their geographical extension (international or universal, national, diocesan); and in their structure (confederations, diocesan sections), etc.

3. The associations of the faithful that are the fruit of the corresponding right of the faithful are voluntary and stable unions of the faithful that, maintaining bonds of communion, transcend the individuals who are members thereof, for the common achievement of ecclesial objectives. Therefore, such entities always presuppose a *pactum unionis* or association contract by which the association is constituted and the members are bound to each other and to the association, and from which originate the corporate rights and obligations. With respect to voluntary unions for the achievement of objectives characteristic of the faithful because they are the faithful, the governance of the associations falls upon the faithful themselves. Power in these associations has its origin in the faithful, who put at the disposal of the association a part of their private autonomy. Therefore, it is a power unlike the power of jurisdiction and its nature is

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4. Cf. *Comm.* 13 (1981), pp. 300–302; and CODE COMMISSION, *Schema CIC* 1980, index, pp. XVff.

5. Cf. *Comm.* 2 (1970), pp. 97–98.

private (although some associations also have power of jurisdiction). Associations in the Church, must positively manifest the ecclesial characteristics by being in communion with the Church and by participating in its mission. They must also manifest these characteristics by not breaking the bonds of communion, expressed in the integrity of faith and customs and in respect for ecclesiastical discipline. The Apostolic Exhortation *Christifideles laici* describes in generic terms the criteria for determining ecclesial lay association entities. According to these criteria associations of the faithful are characterized as being instruments of holiness in the Church; places where the Catholic faith is accepted and proclaimed; united and in communion with the Roman Pontiff and with the proper bishop; as participating actively in the apostolic purpose of the Church; and, lastly, as being present in human society, in the service of the dignity of people (*CL* 30).

4. Precisely to make room in the code for entities in which the right to associate is manifested in all its aspects, the current norms have distinguished public associations from private associations, assigning them different juridical norms, which are a manifestation of the different relationship between the association and the ecclesiastical authority. Private associations are characterized as enjoying broad autonomy and freedom: they are established by the faithful themselves in order to achieve ecclesial objectives; they are governed by them; and their patrimony is not ecclesiastical. The Code requires that they have statutes, which must be reviewed at least by the ecclesiastical authority. It is also provided that some of these associations may receive private juridical personality, thereby granting greater institutionalization to the association. The requirement that there be statutes (an element that contributes to the stability of the association, to its identity in time, and to protection from juridical dealings) leads one to believe that the *CIC* configures a technical type of private association, by which those association realities that do not fully meet these requirements will be ecclesial associations of a private nature, and not be "private associations."

The governance of public associations stresses the existence of a close relationship of dependence on the ecclesiastical authority, (at their birth, during their life, and upon their extinction), because they are entities that act *nomine Ecclesiae*. For their establishment, public associations always require an act of erection by the competent ecclesiastical authority, receive the *missio* if they need it, are subject to the authority that exercises full control over them, have ecclesiastical assets, and are always public juridical persons.

The meaning of the faculties that are attributed to the ecclesiastical authority is found in the function performed by these associations. Those that have an objective that is reserved for the authority (cf. c. 301 § 1) are instruments in the service of the hierarchy. This is because the hierarchy makes them share in some of its functions, and they constitute a specific

instance of a contribution by the faithful to the functions of the hierarchy. Through the creation of the entity and the granting of the *missio*, the faithful are allowed to pursue as an association objectives that exceed the scope of their autonomy. The remaining public associations (cf. c. 301 § 2) are also in the service of the authority because the authority creates them and assigns to them certain objectives in order to make up for a lack of initiative on the part of the faithful.

The exercise of the right to associate in public associations presents some peculiarities because it is combined with the presence of acts by the authority that are essential to the existence of the association. This does not prevent the social bonds in these entities from being those of an association, nor the activities and the measures also from being so. Nor does it prevent the power from having an associative nature, although in some associations certain areas will be governed with power of jurisdiction, as for example, everything related to the exercise of orders in clerical associations (cf. c. 302).

CAPUT I
Normae communes

CHAPTER I
Common Norms

298 **§ 1. In Ecclesia habentur consociationes distinctae ab institutis vitae consecratae et societatibus vitae apostolicae, in quibus christifideles, sive clerici sive laici sive clerici et laici simul, communi opera contendunt ad perfectiorem vitam fovendam, aut ad alia apostolatus opera, scilicet ad evangelizationis incepta, ad pietatis vel caritatis opera exercenda et ad ordinem temporalem christiano spiritu animandum.**

§ 2. Christifideles sua nomina dent iis praesertim consociationibus, quae a competenti auctoritate ecclesiastica aut erectae aut laudatae vel commendatae sint.

§ 1. In the church there are associations which are distinct from institutes of consecrated life and societies of apostolic life. In these associations, Christ's faithful, whether clerics or laity, or clerics and laity together, strive with a common effort to foster a more perfect life, or to promote public worship or Christian teaching. They may also devote themselves to other works of the apostolate, such as initiatives for evangelisation, works of piety or charity, and those which animate the temporal order with the Christian spirit.

§ 2. Christ's faithful are to join especially those associations which have been established, praised or recommended by the competent ecclesiastical authority.

SOURCES: § 1: c. 685; PIUS PP. XI, Enc. *Ubi arcano*, 23 dec. 1922 (*AAS* 14 [1922] 692–693); PIUS PP. XI, Let. *Dilecte fili*, 7 nov. 1929 (*AAS* 21 [1929] 664–668); *CD* 17; *OT* 2; *GE* 6, 8; *AA* 5–8, 11, 18, 19; *PO* 8
§ 2: c. 684; SCCouncil Resol., 13 nov. 1920 (*AAS* 13 [1921] 135–144); SCHO Resp., 8 iul. 1927 (*AAS* 19 [1927] 278), PIUS PP. XII, Ap. Const. *Bis saeculari*, 27 sep. 1948 (*AAS* 40

[1948] 393–402); SCHO Monitum, 28 iul. 1950 (*AAS* 42 [1950] 553); *AA* 21

CROSS REFERENCES: cc. 114, 215, 299 § 2

COMMENTARY

Luis Felipe Navarro

1. Paragraph 1 contains an enumeration of the objectives for which the faithful can join forces. If these objectives are compared to those described in c. 685 of the *CIC*/1917, the current enumeration is broader. Additionally, given that there is no correlation between the objectives and the types of associations (cf. cc. 685 and 700 *CIC*/1917), a large variety of objectives is allowed, including those that are purely spiritual as well as those that have more of a connection to the temporal order. This change follows an in-depth examination of the meaning of the objectives that can be the object of an association of the faithful. By rediscovering the baptismal vocation, the universal call to holiness, and the joint responsibility of the faithful in the achievement of the objective of the Church (cf. *LG* 11, 39–41; *AA* 2, 6, 7 and 13), the doctrine of Vatican Council II has allowed it to be stressed that associations are fit instruments for the search for holiness and the exercise of the apostolate. As the ways to holiness are diverse and the forms of the apostolate are numerous, the objectives of associations of the faithful may be equally diverse. The same Council, using a wording very similar to that of c. 298 § 1, presented a wide range of objectives: seeking to achieve a more perfect Christian life, the spreading of Christian doctrine, evangelization, giving testimony of Christ through works of mercy and of charity, animating the temporal order with the Christian spirit, etc. (cf. *AA* 19; *CD* 17). Additionally, an acknowledgment of the existence of the charisms that the Holy Spirit distributes among the faithful (cf. *LG* 13)[1] ought to have an impact on the objectives that associations of the faithful may undertake.

Real life offers a multitude of objectives that are among the purposes of associations of the faithful, from the Christian formation of its members to care for the sick and elderly, including associations related to the ecclesiastical sciences (associations of theologians, of philosophers, of

1. Cf. P. LOMBARDÍA, "Rilevanza dei carismi personali nell'ordinamento canónico," in *Il Diritto ecclesiastico* 80 (1969), pp. 3–21; E. CORECCO, "Istituzione e carisma in riferimento alle strutture associative," in W. AYMANS-K.T. GERINGER-H. SCHMITZ (Eds.), *Das konsoziative Element in der Kirche. Akten des VI. internationalen Kongresses für kanonisches Recht, München, 14.–19. September 1987* (St. Ottilien 1989), pp. 94–98; J. MIRAS, "Carisma y estructuras asociativas: ¿un binomio necesario?," in ibid., pp. 149–156.

canonists) or those seeking to give Christian inspiration to the civil sciences and to professional corporations (associations of physicians, of nurses, of jurists, etc.)

In short, associations of the faithful may decide to achieve any objective that is in keeping with the mission and nature of the Church, because, as Hervada states, "the faithful unite in an association for given objectives, which cannot be other than those contained in the ecclesial position and mission of the faithful because they are the faithful. Therefore, the associative phenomenon has as its basis the joint responsibility of the faithful with regard to said objectives; because the faithful are jointly responsible in connection therewith, they can unite in order to achieve them. If they were personal, non-sharable objectives, there would be no place for an association.[2]

2. The question of which objectives are characteristic of associations of the faithful is closely related to the need and requirement that all associations that pursue these objectives be canonical associations of the faithful. While some objectives are strictly ecclesial—fostering a more perfect Christian life, evangelization, works related to worship—and therefore are necessarily the object of the right of the faithful to associate, others, such as performing works of charity or activities more related to the temporal order, can be undertaken by canonical associations. These objectives arise from the exercise of the right of the faithful, as well as in civil associations, and arise by virtue of the human right to associate, whether or not they are fostered and lead by Catholics. Within this latter category of objectives are included, for example, the defense of life from conception to the death of the human being, the defeat of drugs or of pornography, aid to the needy, etc. Such objectives may absolutely be the object of associations that the recent *pastoral Note* of the episcopal Commission of the CBI for the Laity on lay associations in the Church calls *organizations of Christian inspiration that act in the temporal sphere.* These organizations are defined in the following manner: those "nelle quali i fedeli laici, interpretando le diverse situazioni culturali, professionali, sociali e politiche, agiscono in nome proprio, come cittadini, guidati dalla coscienza cristiana. Alla luce e con la forza della fede, essi operano nelle realtà temporali sotto la propria responsabilità personale o collettiva, per farle crescere secondo le prospettive di un autentico umanesimo plenario."[3] As specified in a previous *pastoral Note* of the

2. J. HERVADA, *Pensamientos de un canonista en la hora presente* (Pamplona 1989), p. 174. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos*, 3rd ed. (Pamplona 1991), pp. 133–134.

3. COMMISSIONE EPISCOPALE DELLA CEI PER IL LAICATO, "Nota pastorale. Le aggregazioni laicali nella Chiesa," April 29, 1993, no. 3, in *Notiziario della CEI* 1993, p. 89. Cf. COMMISSIONE EPISCOPALE DELLA CEI PER L'APOSTOLATO DEI LAICI, "Nota pastorale. Criteri di ecclesialità dei gruppi, movimenti, associazioni," May 22, 1981, no. 11, in *Enchiridion della Conferenza Episcopale Italiana*, vol. 3 (Bologna 1986), p. 316.

episcopal Commission for the apostolate of the laity of the same CBI, they are associations of the faithful, a fruit of human beings' right to freely associate,[4] which, consequently, may be joined by persons who do not share "un preciso e personale impegno di fede e vita ecclesiale."[5]In view of this type of objective, the decision of whether to create a canonical association or a civil association will depend on the will of the faithful, who cannot be forced to submit to canonical juridical governance. Were it otherwise, it would entail a violation the legitimate freedom they have in the temporal sphere (cf. c. 227),[6] and it would be considered that a merely natural objective, being pursued by a Catholic, is subject to the canonical order as the only competent order. Catholics who are part of these civil associations must respect and follow the doctrine of the Church regarding these objectives (cf. *GS* 36 and 76), but this personal connection to the Magisterium does not imply that these associations must be canonical, because, on the other hand, that doctrinal content is binding on all people by virtue of natural law.

Moreover, from an apostolic point of view, civil associations that pursue this type of objective may serve as suitable instruments for persons who are estranged from the Church to receive the doctrine of the Magisterium on man through the conduct of the Catholic members. This fact will certainly be a step towards acceptance of other aspects of Church doctrine. Preventing Catholics from establishing civil associations with the objectives we have discussed, or being members of them, would be to the detriment of the very apostolic effectiveness of the Church, because non-Catholics or non-practicing Catholics would have little inclination to be linked to canonical associations subjected to the supervision and governance of ecclesiastical authority, and then they would not receive the assistance that Catholics could render in civil associations.

Due to all of the foregoing, in cases in which the social objective is not exclusively canonical, the main criterion to be followed would be the will of the faithful, who may decide whether their association is to be canonical or civil.

3. Paragraph two exhorts the faithful, without limiting their freedom to associate, to join those associations that have been established, praised, or recommended by the competent ecclesiastical authority. Although all associations of the faithful deserve respect and esteem (cf. *AA* 21), some, in the opinion of the authority, will be more beneficial for the Church, and, therefore, membership in them is encouraged through praise and recommendation. As a complement to this exhortation from

4. Cf. COMMISSIONE EPISCOPALE DELLA CEI PER L'APOSTOLATO DEI LAICI, *Nota pastorale. Criteri di ecclesialità...*, cit., p. 316, note 3.
5. Ibid., p. 316.
6. Cf. J.T. MARTÍN DE AGAR, "El derecho de los laicos a la libertad en lo temporal," in *Ius canonicum* 26 (1986), pp. 531ff.

the authority for the faithful to join certain associations, there is the special esteem that all the people of God, priests, religious, and laity, must have for these associations and their duty to promote them by any suitable means (cf. *AA* 21). Although the text of the canon contains a generic recommendation for membership in associations established by the authority, there is nothing that prevents the authority from expressly recommending a certain public association to the faithful because of the special value it may have.

The decision to praise and recommend an association must be based on certain aspects characteristic of the activity and objective of the association that make it particularly respected by ecclesiastical authority.

299 **§ 1. Integrum est christifidelibus, privata inter se conventione inita, consociationes constituere ad fines de quibus in can. 298, § 1 persequendos, firmo praescripto can. 301, § 1.**

§ 2. Huiusmodi consociationes, etiamsi ab auctoritate ecclesiastica laudentur vel commendentur, consociationes privatae vocantur.

§ 3. Nulla christifidelium consociatio privata in Ecclesia agnoscitur, nisi eius statuta ab auctoritate competenti recognoscantur.

§ 1. By private agreement among themselves, Christ's faithful have the right to constitute associations for the purposes mentioned in can. 298 § 1, without prejudice to the provisions of can. 301 § 1.

§ 2. Associations of this kind, even though they may be praised or commended by ecclesiastical authority, are called private associations.

§ 3. No private association of Christ's faithful is recognised in the Church unless its statutes have been reviewed by the competent authority.

SOURCES: § 1: SCCouncil Resol., 13 nov. 1920 (*AAS* 13 [1921] 135–144); *AA* 19, 24
§ 2: *AA* 24

CROSS REFERENCES: cc. 215, 298, 446, 455 § 2, 456

COMMENTARY

Luis Felipe Navarro

1. In complete continuity with c. 215, c. 299 § 1 proclaims the right of the faithful to *constitute* associations in order to achieve the objectives that fall within the scope of their autonomy. Objectives reserved *natura sua* for the ecclesiastical authority are excluded (cf. c. 301 § 1) because in these objectives the efficacy of the right of the faithful is reduced if there is no establishment with the subsequent mission.[1] As doctrine has emphasized,[2] it is also stated that an association of this type is the result of the

1. Cf. *AA* 19; and VATICAN COUNCIL II, Schema Decreti "De Apostolatu laicorum," 1964, in *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II*, vol. III, pars III, pp. 406–407.
2. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos*, 3rd ed. (Pamplona 1991), pp. 129–130.

action of the faithful. The common intent gives life to the new entity, and gives birth to the associative bond that unites the members in the achievement of some ecclesial objectives. As long as this bond exists, the association will exist.[3] Therefore, the association is the fruit of a juridical transaction called an associative contract.[4] This contract is essential for the association; if there is none, the association does not exist, and if there is one, it is sufficient for a new entity to exist.

Therefore, also in cases in which the origin of the association is based on a charism, the common intent continues to be the efficient cause of the association; until there is an agreement, there is a charism and a person who has received it and who is called to spread it. One can speak, therefore of an association plan, but not of an association.[5] Consequently, in these cases, the *pactum unionis* is necessary, by which the desires of the future members accept the charisma received by the founder and they decide to unite to put it into practice.

Normally, there is a founding agreement, and the requirements for validity and liciaty of juridical acts (cf. cc. 124–126) are fulfilled in a written founding document that will give evidence of the constitution of the association.

2. Paragraph two states that praise and commendation, acts of the authority in connection with associations, do not alter the nature of the private association. Moreover, as has recently been asserted by the CBI, granting commendation and praise "non basta a attribuire a una associazione la qualifica di associazione riconosciuta (*agnita*)."[6] In fact, such acts are considered to be pastoral recognition, which does not alter the juridical status of the association. Although theoretically it is possible to distinguish between praise(which goes to the association), and commendation,(an act directed specifically to those who still are not a part of it[7]), both acts manifest that the authority especially esteems an association, and in practice they will have very similar effects: promoting an appreciation of those associations, favoring joining by new members, etc.

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3. Cf. J. HERVADA, *Pensamientos de un canonista en la hora presente* (Pamplona 1989), p. 174.

4. Cf. A. DÍAZ DÍAZ, *Derecho fundamental de asociación en la Iglesia* (Pamplona 1972), p. 231; and E. MOLANO, *La autonomía privada en el ordenamiento canónico. Criterios para su delimitación material y formal* (Pamplona 1974), p. 270.

5. Cf. A. DÍAZ DÍAZ, *Derecho fundamental...*, cit., p. 229.

6. CBI, "Istruzione in materia amministrativa," April 1, 1992, no. 110, in *Notiziario della CEI* 1992, p. 130.

7. Cf. S. BUENO SALINAS, "Personalidad jurídica de las asociaciones: naturaleza, constitución y aprobación o erección," in *Asociaciones canónicas de fieles. Simposio celebrado en Salamanca* (Salamanca 1987), p. 102; G. FELICIANI, "Le associazioni dei fedeli nella normativa canonica," in *Aggiornamenti sociali* 38 (1987), pp. 695–696; and W. SCHULZ, "La posizione giuridica delle associazioni e la loro funzione nella Chiesa," in *Apollinaris* 59 (1986), p. 124.

The aforementioned acts of the authority do not in themselves imply greater supervision of the association. However, it seems obvious that, within the framework of general supervision, the authority will pay particular attention to those aspects that gave rise to the praise or commendation, so that, if those aspects should come to be lacking, the authority may withdraw the praise or commendation.

Apart from the competent authority indicated in c. 312 (Holy See, bishops' conference, and diocesan bishop), others, such as the bishops of a region or of an ecclesiastical province, should not be prevented from granting and withdrawing praise or commendations.

3. In accordance with § 3, in order for a private association to be recognized in the Church, it is required that its statutes be reviewed by the competent ecclesiastical authority.[8] This requirement comes from a proposal according to which, in continuity with the norms of *CIC*/1917 (c. 686), the establishment or approval of an association is a necessary requirements for its *recognitio* according to canon law,[9] because an association "ut exsistere valeat, requirit collaborationem auctoritatis ecclesiasticae."[10] The Commission drafting the code accepted this request in part, altering its scope, because instead of the *probatio* or *erectio*, only *recognitio statutorum* was required. In addition, it can be seen from its response to that request that, on the one hand, as the constitution of an association of the faithful is a juridical act by these faithful, once the founding juridical transaction is concluded, the association exists in the Church. On the other hand, that recognition of the association is an act of the authority in which the authority, through control, declares that the associa-

8. Cf. E. CORECCO, "Aspetti della ricezione del Vaticano II nel Codice di diritto canónico," in G. ALBERIGO-I.P. JOSSUA (Eds.), *Il Vaticano II e la Chiesa* (Brescia 1985), p. 361; idem, "I laici nel nuovo Codice di Diritto canónico," in *La scuola cattolica* 112 (1984), pp. 211ff; R. BACCARI, "Il diritto di associazione nella Chiesa," in *I laici nel Diritto della Chiesa* (Vatican City 1987), p. 61; G. DALLA TORRE, *Considerazioni preliminari sui laici in Diritto canónico* (Modena 1983), pp. 117–118; G. FELICIANI, "Le associazioni dei fedeli...," cit., p. 691ff; idem, "I diritti e i doveri dei fedeli in genere e dei laici in specie. Le associazioni," in S. FERRARI (Ed.), *Il nuovo Codice di diritto canónico* (Bologna 1983), pp. 271–272; M. LÓPEZ ALARCÓN, "La personalidad jurídica civil de las asociaciones canónicas privadas," in *Revista Española de Derecho Canónico* 44 (1987), pp. 393ff; J. MANZANARES, "Las asociaciones canónicas de fieles. Su regulación jurídica," in *Asociaciones canónicas de fieles*..., cit., pp. 121–122; L. MARTÍNEZ SISTACH, "Asociaciones públicas y privadas de laicos," in *Ius canonicum* 26 (1986), pp. 153ff; idem, *Las asociaciones de fieles*, 2nd ed. (Barcelona 1987), pp. 89ff; idem, "El derecho fundamental de la persona humana y del fiel a asociarse," in *Asociaciones canónicas de fieles*..., cit., pp. 85–86; R. PAGÉ, "Associations of the faithful in the Church," in *The Jurist* 47 (1987), pp. 169ff; idem, "Les associations de fidèles: reconnaisance et érection," in *Studia Canonica* 19 (1985), pp. 332ff; S. PETTINATO, "Le associazioni dei fedeli," in *Il Codice del Vaticano II. Il fedele laico* (Bologna 1989), pp. 256ff; idem, "Associazioni private dei fedeli e 'debita relatio' con l'autorità ecclesiastica," in *Il Diritto ecclesiastico* 97 (1986) I, pp. 512–513; W. SCHULZ, "La posizione giuridica...," cit., p. 123ff; idem, *Der neue Codex und die kirchliche Vereine* (Paderborn 1986), pp. 49–50.

9. Cf. *Comm.* 15 (1983), p. 87.

10. Ibid., p. 87.

tion exists in the Church and that, consequently, it meets the ecclesial conditions.[11] In fact, the creation of an association of the faithful implies that in this association the essential conditions of ecclesiality are met, because were they lacking, (for example, because the association pursued objectives not in accord with or contrary to the nature of the Church), the act of constitution would be null in the canonical order, in that there would not be an association in the Church and of the Church. Moreover, if it were a matter of associations with objectives contrary to the Church, not only would the act be null, but those responsible could be penally charged (cf. c. 1374). In short, should the association be contrary to the unity and communion of the Church—expressed in the threefold bond of faith, sacraments, and governance—it would not be an association in the Church nor the exercise of a right in the Church.

The *agnitio* of the association is, therefore, always subsequent to its constitution thereof.[12] It does not add any *essential element to the intrinsic ecclesiality* of the association, which already from its inception acts as an entity that is consistent with the objectives of the Church and has the necessary bonds of communion; it simply declares it.

4. The existence of association forms that do not conform to all the characteristics provided by the Code for private associations which may lack statutes or be little more than a continuous exercise of the right of the faithful to meet, without a duly-formed structure and organization, presents the problem of the obligatory nature of the *recognitio statutorum*. There is no room to doubt the legitimate existence of these associations, since they are the fruit of the right to associate (c. 215), and thus some bishops' conferences have expressly recognized it. It is significant that the CBI indicates that "in base al vigente Codice" one of the types of associations is the "associazioni private di fedeli senza alcun riconoscimento formale da parte dell'autorità ecclesiastica,"[13] which "esistono, come si suole dire, 'di fatto' e legittimamente nella Chiesa."[14] It is also significant that the CBF states, "En vertu du canon 215, qui définit la liberté d'association comme une liberté fondamentale du fidèle, on doit admettre que des associations peuvent exister dans l'Église, dans lesquelles les fidèles se regroupent sans demander la reconnaissance canonique des statuts," calling them "Associations 'de fait.'"[15] As in these associations there are also the bonds of communion, they are subject to the gover-

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11. Cf. S. PETTINATO, "Le associazioni dei fedeli," cit., p. 257.
12. Cf. G. FELICIANI, "Le associazioni dei fedeli...," cit., p. 692.
13. CBI, "Istruzione in materia amministrativa," cit., no. 110.
14. COMMISSIONE EPISCOPALE DELLA CEI PER IL LAICATO, "Nota pastorale. Le aggregazioni laicali nella Chiesa," April 28, 1993, no. 25, in *Notiziario della CEI* 1993.
15. CBF, "Les associations canoniques nationales. Refléxions doctrinales," no. 4, in *Bulletin Officiel de la Conférence des Évêques de France*, February 11, 1992, p. 546.

nance and to the supervision of the authority (c. 305)[16] in the manner and scope with which the faithful as individuals are so subject.[17] Therefore, it must be concluded that recognition of the statutes will not always be necessary (the episcopal Commission of the CBI for the laity foresees this possibility for the "associazioni private 'di fatto'")[18] and that there is no strict general obligation to request it from the ecclesiastical authority.[19] Consequently, the legitimacy of an association will not always be dependent on recognition by the authority.[20]

It would have to be requested, for example, when official recognition from the authority is needed. This would be true when the importance of the concrete association phenomenon demands that the authority, for the good of the Christian community, rule on the ecclesial status of the association; when relations between the authority and the association must be institutionalized; or when it is necessary to declare the ecclesial nature of the association in order to dispel any controversies that may have arisen within the community on the authenticity of that concrete associative phenomenon. Moreover, it may be appropriate to request this recognition when the association wishes to receive praise, commendation, or the use of the term "Catholic" from the authority.[21]

From all that we have seen, it is evident that an association already in existence enjoys the right to recognition,[22] and that the authority has the duty to recognize it.[23] This *agnitio* of the association does not consist of anything except certification of its ecclesial status. To this end, the *CIC* has provided that the *recognitio statutorum* must be carried out,[24] which is an act whereby it is decided whether the statutes are in conformity with

16. Cf. ibid., no. 4; COMMISSIONE EPISCOPALE DELLA CEI PER IL LAICATO, "Nota pastorale. Le aggregazioni laicali nella Chiesa," cit., no. 25.
17. Cf. SCCouncil, *Resolutio Corrienten.*, November 13, 1920, in *AAS* 13 (1921), p. 140; and CODE COMMISSION, *Schema Legis Ecclesiae Fundamentalis. Textus emendatus*, Rome, July 25, 1970, p. 87.
18. Cf. COMMISSIONE EPISCOPALE DELLA CEI PER IL LAICATO, "Nota pastorale. Le aggregazioni laicali nella Chiesa," cit., no. 25; and COMMISSIONE EPISCOPALE DELLA CEI PER L'APOSTOLATO DEI LAICI, *Nota pastorale. Criteri di ecclesialità...*, cit., no. 16.
19. Cf. G. FELICIANI, "Le associazioni dei fedeli...," cit., p. 692.
20. Cf. E. CORECCO, "I laici nel nuovo codice...," cit., pp. 213–214.; G. FELICIANI, "Le associazioni dei fedeli...," cit., pp. 691–692.; R. PAGÉ, "Associations of the faithful...," cit., p. 169; W. SCHULZ, "La posizione giuridica...," cit., pp. 122–123; M. LÓPEZ ALARCÓN, "La personalidad jurídica civil...," cit., p. 395; and J.R. AMOS, "Associations of the Christian Faithful: History, Analysis and Evaluation," in *Canon Law Society of America. Proceedings of the Fiftieth annual Convention* (Washington 1989), pp. 135–136.
21. Cf. G. FELICIANI, "Le associazioni dei fedeli...," cit., p. 692; idem, "I diritti e i doveri...," cit., p. 271.
22. Cf. G. FELICIANI, "Le associazioni dei fedeli...," cit., p. 692; P. VALDRINI, "Les personnes juridiques et les communautés associatives," in *Droit canonique* (Paris 1989), p. 140; and J.L. GUTIÉRREZ, commentary on c. 299, in *Pamplona Com.*
23. Cf. S. PETTINATO, "Le associazioni dei fedeli," cit., p. 260.
24. Cf. *Comm.* 15 (1983), p. 83.

the provisions of law,[25] and if there is anything in them that is contrary to the faith, to custom, or to ecclesiastical discipline.[26] It is decided whether the proposed objectives are legitimate and are included in the framework established by c. 298 § 1; and it is determined whether the means provided are, in principle, adequate for the corporate objectives and activities.[27] This act of the authority is "a manifestation of the duty of the hierarchy to watch that the exercise of the autonomy that the code grants to these entities is developed in accordance with the common good of the Church."[28]

5. In view of the purpose of the *recognitio statutorum*, the activity of the authority will not be reduced to a mere formal examination of the content of the statutes, but the authority must familiarize itself with what the association is in its actual existence. Therefore, it is lawful and necessary to make use of other sources of information in addition to the statutes.[29] In fact, the practice followed for the *agnitio* of an association usually proceeds in the following manner: *a)* letter from the president of the association, sent to the competent ecclesiastical authority, requesting the *recognitio* as provided in c. 299 § 3; *b)* the following documentation is attached to the letter: the association's statutes, a brief history of the association indicating when it was constituted, by whom, and its development to date; an indication of its actual geographical scope (parishes, dioceses, ecclesiastical provinces or regions, nations); number of members, acts of praise or commendation by the authority; and letters from priests or bishops testifying to the association and its activities; *c)* analysis of the documentation by one or more experts in the field; *d)* supplemental reports requested by the authority from anyone who may be familiar with the association; and *e)* the decision of the authority. It should not be forgotten that in some cases it is reasonable to not grant *recognitio statutorum* immediately, but rather to wait for a period of time in order to take into account the actual evolution of the association. In fact, there is a tendency in some areas to require a period of five years of the life of an association before its statutes can be submitted for *recognitio* on the part of the competent authority. In any event, were there a norm imposing said requirements, it should be sufficiently flexible to adapt to the actual needs of the association and of the ecclesial community in which its activity is carried out. If necessary, it would probably be best for this period,[30] to be

25. Cf. CBS, "Instrucción sobre asociaciones canónicas de ámbito nacional," April 24, 1986, no. 33, in *Boletín Oficial de la Conferencia Episcopal Española* 10 (1986).
26. Cf. CBF, "Les associations canoniques nationales...," cit., no. 8; and G. FELICIANI, "Le associazioni dei fedeli...," cit., p. 693.
27. Cf. *Comm.* 15 (1983), p. 83.
28. L. PRADOS TORREIRA, "La intervención de la autoridad sobre la autonomía estatutaria," in W. AYMANS-K.T. GERINGER-H. SCHMITZ (Eds.), *Das konsoziative Element...*, cit., p. 471.
29. Cf. G. FELICIANI, "Le associazioni dei fedeli...," cit., p. 693.
30. Cf. R. PAGÉ, "Associations of the faithful...," cit., pp. 200 and 203; and S. PETTINATO, "Le associazioni dei fedeli," cit., p. 258.

established by mutual agreement between the association and the authority.

If, upon examining the statutes, the ecclesiastical authority believes that they could be improved in some respects, he may suggest that the association make some amendments. If, however, the authority should find any elements contrary to the essential requirements of ecclesial status, he must require an amendment to the statutes. The authority will refrain from amending the statutes himself, because guardianship control "never qualifies one to substitute the discretion of the protected entity. Guardianship may authorize, approve or not approve, suspend or not suspend an act."[31]

6. As a consequence of the procedure for review of the statutes, the authority will state whether he recognizes the association.[32] The decision of the authority is to be in the form of a decree executed in writing, indicating the reasons, at least in summary form (cf. c. 51). These decrees generally are structured in the following manner: the first part mentions the written request for *recognitio statutorum* by the president of the association, and the characteristics of the association are taken into account (name, date of constitution, its objective, its private nature); c. 312, which grants competency to the authority and any other applicable provisions are mentioned (for example, the statutes of the bishops' conference); and it indicates that it has a favorable opinion from the competent authorities, if so required. The second part decrees that the statutes of the association, according to the text submitted by the association (a copy of which is attached to the decree), have been reviewed, according to the provisions of c. 299 § 3 and for the purposes provided therein.

7. If the decision is a refusal, recourse before the competent authority is allowed, as the right to form associations would be impossible to protect and would be void of any content.[33]

The *CIC* is silent regarding any subsequent amendments to the statutes of these associations. According to the majority of doctrine, it would be necessary for the competent authority to review them,[34] also when changes introduced do not alter essential aspects.

31. G. ARIÑO, *La administración institucional* (Madrid 1974), p. VII (cited by L. PRADOS TORREIRA, "La intervención de la autoridad...," cit., p. 473).
32. Cf. R. PAGÉ, "Les associations de fidèles...," cit., p. 333; and G. FELICIANI, "Le associazioni dei fedeli...," cit., p. 692–693.
33. Cf. J.L. GUTIÉRREZ, commentary on c. 299, in *Pamplona Com.*
34. Cf. J. MANZANARES, "Las asociaciones canónicas de fieles...," cit., p. 130; and L. MARTÍNEZ SISTACH, *Las asociaciones de fieles*, cit., pp. 47 and 112–113.

300 **Nulla consociatio nomen "catholica" sibi assumat, nisi de consensu competentis auctoritatis ecclesiasticae, ad normam can. 312.**

No association may call itself 'catholic' except with the consent of the competent ecclesiastical authority, in accordance with can. 312.

SOURCES: *AA* 24

CROSS REFERENCES: cc. 216, 803 § 3, 808

COMMENTARY

Luis Felipe Navarro

This norm requires the consent of the competent ecclesiastical authority for an association to be called "catholic," thus applying to associations what was established by Vatican Council II regarding initiatives of the faithful (*AA* 24), generally set forth in c. 216. The term "catholic" does not mean that the association is acting in the name of the Church by becoming a public association; it simply indicates with more emphasis that it is an association *in Ecclesia* and that the authority considers it suitable to achieve the proposed objectives. Therefore, it is a higher degree of pastoral acceptance of an association.[1]

The scope of the reference to c. 312 is only an indication of which authority is competent to authorize use of the term "catholic" (the Holy See, the bishops' conference, and the diocesan bishop) for the respective associations. The reference may not be understood as reserving that term for public associations. Consequently, public associations as well as private associations may bear the title of catholic. The history of the drafting of this canon confirms what was said previously, because it was originally part of a canon (the current c. 299) that fully discussed private associations.[2]

With respect to the criteria that should guide the authority when granting use of the title "catholic," there are no specific norms. Although they were given during the development of the *CIC*, the provisions of the

1. Cf. G. FELICIANI, "Le associazioni dei fedeli nella normativa canonica," in *Aggiornamenti sociali* 38 (1987), p. 697; F.G. MORRISEY, "What makes an institution 'catholic'?," in *The Jurist* 47 (1987), pp. 531ff; and L. MARTÍNEZ SISTACH, *El derecho de asociación en la Iglesia* (Barcelona 1973), p. 240.
2. Cf. *Comm.* 12 (1980), p. 93–94; and 15 (1983), p. 83.

PCL, contained in the Directory *Le motu proprio*,[3] continue to provide guidance on the characteristics that must be met by an association in order that the ecclesiastical authority grant it the title "catholic." It indicates such things as: a clear reference to conformity with the Gospel and the Magisterium, a willingness to fit into the pastoral efforts of the Church, care for the Christian formation of its members and an availability to serve in areas such as the evangelization and sanctification, animating the temporal order with a Christian spirit, charity, as well as in social and professional environments, in families, in youth, in education, in the media, etc. Moreover, it was required that those in charge always be catholic.[4] The criteria of ecclesiality contained in *Christifideles laico* 30 are more up-to-date. However, all of these criteria, considered in themselves, are characteristics of all associations of the faithful,[5] including those that will not receive the title "catholic," and, therefore, they must be present, to some extent, in all of them.

In the same way that the authority can grant use of this title, it is qualified, with just cause, to withdraw it when the association or its activities do not do justice to the term.

3. Cf. PCL, *Directorio "Le motu proprio,"* December 3, 1971, in *AAS* 63 (1971), pp. 948–956.

4. Cf. ibid., no. 3, pp. 952–954.

5. Cf. R. PAGÉ, "Note sur les 'critères d'ecclesialité pour les associations de laïcs,'" in *Studia Canonica* 24 (1990), p. 460.

301 **§ 1. Unius auctoritatis ecclesiasticae competentis est erigere christifidelium consociationes, quae sibi proponant doctrinam christianam nomine Ecclesiae tradere aut cultum publicum promovere, vel quae alios intendant fines, quorum prosecutio natura sua eidem auctoritati ecclesiasticae reservatur.**

§ 2. Auctoritas ecclesiastica competens, si id expedire iudicaverit, christifidelium consociationes quoque erigere potest ad alios fines spirituales directe vel indirecte prosequendos, quorum consecutioni per privatorum incepta non satis provisum sit.

§ 3. Christifidelium consociationes quae a competenti auctoritate ecclesiastica eriguntur, consociationes publicae vocantur.

§ 1. It is for the competent ecclesiastical authority alone to establish associations of Christ's faithful which intend to impart Christian teaching in the name of the Church, or to promote public worship, or which are directed to other ends whose pursuit is of its nature reserved to the same ecclesiastical authority.

§ 2. The competent ecclesiastical authority, if it judges it expedient, can also establish associations of Christ's faithful to pursue, directly or indirectly, other spiritual ends whose attainment is not adequately provided for by private initiatives.

§ 3. Associations of Christ's faithful which are established by the competent ecclesiastical authorities are called public associations.

SOURCES: § 1: c. 686 § 1; SCCouncil Resol., 13 nov. 1920 (*AAS* 13 [1921] 135–144); PIUS PP. XI, Let. *Dilecte fili*, 7 nov. 1929 (*AAS* 21 [1929] 664–668), PIUS PP. XII, Alloc., 4 sep . 1940 (*AAS* 32 [1940] 362–372); *AA* 24
§ 2: c. 686 § 1; SCCouncil Resol., 13 nov. 1920 (*AAS* 13 [1921] 135–144); PIUS PP. XI, Let. *Dilecte fili*, 7 nov. 1929 (*AAS* 21 [1929] 664–668); *AA* 24

CROSS REFERENCES: cc. 115 § 2, 116, 298 § 1, 313, 747, 759, 834, 835

COMMENTARY

Luis Felipe Navarro

Within the framework of the ends proper to associations (cc. 298 and 215), c. 301 §§ 1 and 2 establishes two categories of ends for public associations: first, those that, by their nature, are reserved to the authority; and, secondly, those that can be pursued by any association of the faithful, be it public or private.

1. *Ends reserved "natura sua" to ecclesiastical authority*

Among the reserved ends, two are mentioned: imparting Christian teaching in the name of the Church and the promotion of public worship,[1] the reservation of which ends was discussed in the preparatory phase of Vatican Council II, in the Council, and in post-conciliar canonical doctrine.[2]

With respect to the first end,[3] the reservation does not refer to the imparting of Christian doctrine, because this duty is also incumbent upon all the faithful by the fact that they are the faithful, but to the manner in which this function is carried out. Doing it *nomine Ecclesiae* is the task of the authority and only this authority can entrust it to an association. A private association may have as its end imparting Christian doctrine, but this activity will not have an official character, it will not be carried out in the name of the Church, but in its own name.[4] Something similar occurs with the participation of a layperson, as an individual, in the *munus docendi*. While he is always responsible to bear witness to the Gospel by word and the example of his Christian life; yet he can also be called to cooperate in the exercise of the ministry of the word, either in preaching the word of God, or in the official catechetical formation (cf. cc. 766 and 774 § 1), which functions are tied to ecclesiastical authority in a different way than

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1. Cf. H. SCHNIZER, "Die Vereinigungen in der Kirche," in J. LIST-H. MÜLLER-H; SCHMITZ (Eds.), *Handbuch des katholisches Kirchenrechts* (Regensburg 1983), p. 474; and M.A. PUNZI NICOLÒ, *Gli enti nell'ordinamento canónico* (Padova 1983), pp. 81–82.

2. Cf. VATICAN COUNCIL II, "Schema 'De Fidelium Associationibus,'" no. VII, in *Acta et documenta Concilio Oecumenico Vaticano II apparando*, series II, vol. II, pars IV, p. 285; *AA* 24; A. DÍAZ DÍAZ, *Derecho fundamental de asociación en la Iglesia* (Pamplona 1972), p. 176; and A. DEL PORTILLO, "Ius associationis et associationes fidelium iuxta Concilii Vaticano II doctrinam," in *Ius canonicum* 8 (1968), pp. 17–18.

3. Cf. CJ. ERRÁZURIZ M., *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), pp. 205–215.

4. Cf. P. VALDRINI, "Le ministère de la Parole de Dieu. Réflexions canoniques sur l'exercice de la charge d'enseigner dans l'Église," in *Documents épiscopat. Bulletin du secrétariat de la Conférence Épiscopale française*, no. 15, October 1987, pp. 3–4.

is the personal apostolate of the faithful. Therefore, when the authority entrusts to an association the furtherance of that end in the name of the Church, the association has more responsibility in the exercise of that activity than does the simple faithful who imparts Christian doctrine.

With respect to public worship (cf. c. 834 § 2), the Code has established that the ecclesiastical authority is to exercise some functions over it: moderating, promoting, and guarding it, since it is an activity that is very closely linked to the ministerial priesthood and to the authority of the Pastors (cf. c. 835 § 1). Given the importance of public worship in the life of the Church, it is understandable that some activities related to it—although not essentially linked to the ministerial priesthood—are attracted to the public character associated with this worship. This would be the case with fostering or promoting the participation of the faithful in worship. It could be an activity that the faithful themselves could carry out by virtue of the common priesthood of the faithfulThis is because if, through this priesthood, they have their own role in the function of sanctifying, participating, in their own way, in liturgical celebrations and especially in the Eucharist (cf. c. 835 § 4), it seems evident that, through the apostolate that is proper to them, they can and should foster and promote public worship. However, it is determined that it is a reserved end. The explanation for the reservation can only be that those principal functions, which belong to the authority, exercise an influence over other functions in which private initiative and also acts carried out with private responsibility would be possible. Therefore, when the authority grants an association the task of promoting public worship, it becomes a guarantor of the acts of the association.

Confraternities and arch-confraternities—associations with a long tradition in the life of the Church[5]—have precisely as their primary end the promotion of some devotions and cult of their respective patrons. Because of their relationship with the activities of worship and consistent with the juridical status they enjoyed in the previous legislation (they were moral persons and their assets were ecclesiastical), these associations are generally considered public.[6] However, there exist, in fact, con-

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5. CF. A. TACHY, *Traité des confréries et des oeuvres pieuses*, 2nd ed. (Langres 1898); and H. DURAND, "Confrérie," in *Dictionnaire de Droit Canonique*, IV (Paris 1949), col. 135–157.

6. Cf. W. SCHULZ, "Confraternite: persone giuridiche pubbliche o private?," in G. BARBERINI (Ed.), *Raccolta di scritti in onore a Pio Fedele* (Perugia 1984), vol I, pp. 393–398; J.A. FERNÁNDEZ ARRUTY, "Naturaleza jurídica de las Cofradías en el nuevo Código de Derecho canónico," in W. AYMANS-K.T. GERINGER-H. SCHMITZ (Eds.), *Das konsoziative Element in der Kirche. Akten des VI. internationalen Kongresses für kanonisches Recht, München, 14.–19. September 1987* (St. Ottilien 1989), pp. 595–597; G. SPINELLI, "La problematica delle confraternite tra associazioni pubbliche ed associazioni private," in ibid., pp. 599–604; J.A. MARQUES, "Las cofradías en el CIC 1917 y en el CIC 1983," in ibid., pp. 605–619; S. CARMIGNANI CARIDI, "I vecchi sodalizi in senso stretto ed il nuovo CIC," in ibid., pp. 621–625; A. TALAMANCA, "La qualificazione delle associazioni tra vecchio e nuovo codice," in ibid., pp. 627–639; and G. FELICIANI, *Il popolo di Dio* (Bologna 1991), pp. 171–172.

fraternities that do not have worship as their main objective,[7] but rather works of charity and of apostolary nature. In these cases they could be private associations of the faithful.

Taking into account that imparting Christian doctrine in the name of the Church and public worship are activities that are intimately connected to the *munera docendi et sanctificandi,* which, according to divine design, is the responsibility of the Sacred Pastors, the fundamental criterion for determining if an end is reserved *natura sua* to the ecclesiastical authority will be if the reservation has its origin in some provision of divine law.[8] It must also be determined if this end could be the object of an association of the faithful, because some functions proper to the authority, such as those of the office of the head, cannot be pursued by associations of the faithful. Recent canonical doctrine, apart from what has already been indicated in the canon under discussion, has only suggested as possible reserved ends the ecumenical end,[9] the care of souls, institutional charitable activity,[10] and the exercise of sacred orders.[11]

2. *Ends of public associations not reserved to ecclesiastical authority*

According to c. 301 § 2, a public association can propose ends not reserved to ecclesiastical authority. Three conditions are required for this: 1) the ends must be spiritual and their attainment is not adequately provided for by private initiatives; 2) the association must pursue them directly or indirectly; and 3) the authority judges it expedient to establish these entities.

Taking into account the private nature of these objectives, the purpose of these associations is to make up for the inadequate private initiative of the faithful. If the faithful, for whatever reason, do not satisfy or do not cover on their own initiative, those areas characteristic of their ecclesial mission, the ecclesiastical authority, carefully taking into account the needs of the specific Christian community that are not being met,[12] can create an association to achieve those most urgent ends or those of greatest importance.

7. Cf. CBI, "Istruzione in materia amministrativa," April 1, 1992, no. 117–118, in *Notiziario della CEI* 1992.
8. Cf. *Comm.* 18 (1986), pp. 212 and 339.
9. Cf. M.A. Punzi Nicolò, *Gli enti nell'ordinamento...*, cit., pp. 81–82.
10. Cf. P. Giuliani, *La distinzione fra associazioni pubbliche e associazioni private dei fedeli nel nuovo codice de Diritto canónico* (Rome 1986), pp. 195–196.
11. Cf. J. Hervada, *Pensamientos de un canonista en la hora presente* (Pamplona 1989), p. 180.
12. Cf. F. Coccopalmerio, "Le associazioni di fedeli nella comunità ecclesiale e il caso particolare dell'Azione Cattolica," in *La scuola cattolica* 113 (1983), p. 436, *passim* note 16.

Before establishing them, the authority shall assess if this is the most appropriate solution.It could also stimulate, encourage, and prepare the faithful to freely provide for the establishment of associations to deal with matters pertaining to their field of action. If it chooses to create associations with these ends, as it is developing a suppletory activity, it must take care that, to the extent possible, it is the faithful themselves who promote and constitute private associations in order to achieve those ends incumbent upon them.[13]

Considering §§ 1 and 2 together, it is evident that the authority is free to create public associations that pursue any type of associative ends in accordance with the nature of the Church, provided that, in the area of non-reserved objectives, it acts in a supplementory way.[14]

Paragraph three establishes, in a taxative way, the following principle: all associations established by the competent ecclesiastical authority are public associations. This implies, in the first place, that the authority has the right to establish determined associations of the faithful; in the second place, that the very act of erection by the authority determines the public nature of the association[15]; and lastly, that the act of erection is essential in the constitution of a public association, such that without it, this association cannot exist. From the point of view of the constitution of a public association, therefore, any acts of the faithful (petition to the ecclesiastical authority for the creation of a public association, request that a private association become public, etc.) or of the authority itself before the erection, (drafting of statutes, consultations, meetings, requests that an existing association contribute the personnel base of a future public association, etc.), would be insufficient and incomplete. However, as soon as public associations are considered authentic associations, from a perspective based on juridical realism, it must be affirmed that the faithful also, through the exercise of the right of association, help give life to the new entity, because "l'esistenza di qualsiasi associazione volontaria presuppone l'esercizio del diritto di associazione da parte di alcuni fedeli, non essendo possibile che la Gerarchia sostituisca questo esercizio, che è la causa fondamentale dell'esistenza giuridica di qualsiasi associazione." Consequently "la costituzione delle associazioni pubbliche è un atto complesso, cui partecipano costitutivamente la volontà dei fedeli e quella

13. Cf. J.L. GUTIÉRREZ, commentary on c. 301, in *Pamplona Com.*

14. For the opposing point of view, cf. P. GIULIANI, *La distinzione fra associazioni...*, cit., pp. 197–199, which criticizes G. FELICIANI, "Le associazioni dei fedeli nella normativa canonica," in *Aggiornamenti sociali* 38 (1987), p. 690.

15. For the opposing point of view, cf. S. BUENO SALINAS, "Personalidad jurídica de las asociaciones: naturaleza, constitución y aprobación o erección," in *Asociaciones canónicas de fieles. Simposio celebrado en Salamanca* (Salamanca 1987), pp. 106–107.

della Gerarchia."[16] In fact, the CBF affirms, regarding public associations, that "n'existeraient pas sans la volonté de membres ayant participé à leur fondation et sans leur initiative qui reste constitutive de l'activité du groupe."[17] For its part, the CBI also takes note of the importance of the support of the faithful when it indicates that public associations "possono essere costituite dall'autorità ecclesiastica sia mediante il riconoscimento della qualifica pubblica di una preesistente associazione privata sia mediante erezione su richiesta di un gruppo di fedeli" and specifies "l'erezione di un'associazione pubblica presuppone quindi o la richiesta di un adeguato numero di fedeli che siano disposti a esserne soci ovvero, nel caso di qualificazione pubblica di una preesistente associazione privata, la formale richiesta deliberata dall'assemblea dei soci."[18] In private associations, however, this complex act (will of the faithful and will of the hierarchy) does not exist, because the intervention of the authority is not constitutive of the association. In the erection, an act proper and exclusive to the ecclesiastical authority, is rooted the main criterion used by the *CIC* to distinguish public from private associations.

The act of erection, as established by the Code (cc. 313 and 116 § 2), is carried out through a special decree, made in writing, by the competent ecclesiastical authority. Inasmuch as it is a decision, this decree must briefly indicate the reasons for erecting a public association (cf. c. 51), and certify at least the following necessary information in order to identify the association: name, end, scope of activity (diocesan, national, or international), headquarters and public nature. Moreover, in order to avoid any possible confusion with the decree granting juridical personality to private associations (cf. c. 322 § 1), it must indicate clearly that by virtue of this decree, a public association is erected,[19] possessing public juridical personality, and that its statutes have been duly approved (cf. c. 314).

16. CJ. ERRÁZURIZ M., "La costituzione delle associazioni dei fedeli in Diritto canónico," in W. AYMANS-K.T. GERINGER-H. SCHMITZ (Eds.), *Das konsoziative Element...*, cit., pp. 485 and 488. Cf. G. FELICIANI, "Le associazioni dei fedeli...," cit., p. 689.

17. CBF, "Les associations canoniques nationales. Refléxions doctrinales," no. 13, in *Bulletin Officiel de la Conférence des Évêques de France*, February 11, 1992.

18. CBI, *Istruzione in materia amministrativa*, April 1, 1992, no. 110.

19. Cf. H. SCHNIZER, "Die Vereinigungen in der Kirche," cit., pp. 464–465.

302 **Christifidelium consociationes clericales eae dicuntur, quae sub moderamine sunt clericorum, exercitium ordinis sacri assumunt atque uti tales a competenti auctoritate agnoscuntur.**

Associations of Christ's faithful are called clerical when they are under the direction of clerics, imply the exercise of sacred orders, and are acknowledged as such by the competent authority.

SOURCES: —

CROSS REFERENCES: cc. 588 § 2, 732

COMMENTARY

Luis Felipe Navarro

According to the provisions of this canon, clerical associations are characterized as being under the direction of clerics, as implying the exercise of sacred orders, and as being recognized as such by the competent ecclesiastical authority.

1. Inasmuch as the nature of these associations and the meaning of their constitutive elements are the object of differing interpretations,[1] it is necessary to consider the circumstances that gave rise to this canon.[2] In order to resolve the institutional problem of missionary societies of secular clerics, which had expressly declared their desire to not be included among institutes of consecrated life,[3] the Coetus "De Christifidelium Iuribus et Associationibus deque Laicis" drafted some new canons, which were included in the Schema canonum Libri II: "De Populo Dei." They expressly mentioned the missionary apostolate as one of the possible ends

1. Cf. P.A. BONNET, "Il chierico ed il diritto-dovere di associarsi liberamente nella Chiesa," in *Il Diritto ecclesiastico* 97 (1986), I, p. 446; G. DALLA TORRE, commentary on c. 302, in P.V. PINTO (Ed.), *Commento al Codice di Diritto canónico* (Rome 1985), pp. 176–177; L. DE ECHEVERRÍA, commentary on c. 302, in *Salamanca Com*; J. HERVADA, *Pensamientos de un canonista en la hora presente* (Pamplona 1989), pp. 179–180; J.L. GUTIÉRREZ, commentary on c. 302, in *Pamplona Com*; R. RODRÍGUEZ-OCAÑA, *Las asociaciones de clérigos en la Iglesia* (Pamplona 1989), pp. 269–279; and S. PETTINATO, "Le associazioni dei fedeli," in *Il Codice del Vaticano II. Il fedele laico* (Bologna 1989), p. 235.

2. Cf. R. RODRÍGUEZ-OCAÑA, *Las asociaciones de clérigos...*, cit., pp. 247–254 and 257–269.

3. Cf. *Comm.* 18 (1986), pp. 382–383; B. AUBERTIN, "Les sociétés missionnaires de vie apostolique. Identité et statut juridique," in practice *juridique et religion*, 4 (1987), pp. 13–22; and CJ. ERRÁZURIZ, ART. "Società di vita apostolica," in *Enciclopedia del diritto*, vol. 42 (Milan 1990), pp. 1164–1166.

of associations of the faithful (c. 39 § 3), described (using the same terms as the current c. 302) the requisites for clerical associations (c. 42). Lastly, the canons determined that some of them could receive from the Holy See the faculty of incardinating or aggregating clerics in the association itself, attributing also the power of governance to the Superiors of said associations (c. 58).

In the later stages of drafting, these texts were subjected to various changes. One of the most significant changes was in the *Schema* of 1980, the paragraph that mentioned the missionary apostolate was deleted, because the indications in the text dedicated to the ends of associations of the faithful (current c. 298 § 1) were considered sufficient.[4] Also important was the change in the *Schema* of 1982, the canon that discussed incardination and the power of governance in clerical associations was deleted, because missionary societies of secular clerics had found their final place among societies of apostolic life.[5] The canon that discussed the characteristics of clerical associations, however, was not the object of discussion in the last drafts of the Code, it was nevertheless promulgated, being the only piece remaining from that initial normative scheme.

2. An analysis of the characteristics of clerical associations necessarily leads one to focus attention on the meaning of the expression "imply the exercise of sacred orders," because exercising the ministry constitutes the essential distinctive element of clerical associations. According to the literal meaning, it can be understood that the exercise of the ministry is the proper *end* of these associations. Were this so, inasmuch as the exercise of the ministry is an activity characteristic of the ecclesiastical organization and is not within the sphere of the autonomy of the faithful, clerical associations *quoad substantiam* "are not associations of the faithful nor are they based upon the fundamental right of association." [6] "They are ministerial bodies of clerics (although they may contain aspects of associations) that exercise their mission *sub ductu hierarchiae* and possess autonomy."[7] Another possible interpretation comes from the normative scheme as it was initially foreseen: the ministry does not constitute the end of the association, but is an element at the service of the missionary end;[8] the apostolate in mission areas would require the presence and exercise of the ministerial priesthood. However, given that the exercise of the ministerial priesthood is not properly the object of the right of associa-

4. Cf. *Comm.* 12 (1980), p. 92.
5. Cf. *Comm.* 15 (1983), p. 86; CPI, *Risposta "Riscontro la sua pregiata," per un parere circa la natura giuridica delle società missionarie (can. 731–746)*, prot. no. 71/84, of May 2, 1984, in *EV Supplementum* 1 (Bologna 1990), pp. 811–813; and CEP, *Risposta ufficiale "L'ecc.mo mons. Rosalio," circa la natura giuridica delle società missionarie*, prot. 2051/84, of May 28, 1984, in *EV Supplementum* 1, cit., pp. 813–815.
6. J. HERVADA, *Pensamientos de un canonista...*, cit., p. 180.
7. Ibid., p. 180.
8. Cf. R. RODRÍGUEZ-OCAÑA, *Las asociaciones de clérigos...*, cit., p. 274.

tion, these missionary associations would really be among the associative instruments used by the Church to carry out its pastoral function in places where it is not yet sufficiently developed.

3. Regardless of which interpretation is the most fitting, the presence of the exercise of sacred orders—an aspect intimately linked to the function of the ecclesiastical authority—means that the association must be governed by clerics and requires that these associations be public, because the exercise of the ministry always has a public character.[9] Given that the constitution of these entities exceeds the scope proper to the right of association of the faithful, the ecclesiastical authority must intervene through the act of erection.

The unique characteristics of these associations allow one to conclude that by the term "clerical," reference is not made to the members who compose the association, but rather this term designates a special type of association, and a technical meaning similar to that of c. 588 § 2 must be attributed to it.[10]

Therefore, there exists a substantial difference between the clerical associations of c. 302 and those foreseen in c. 278. The latter are the fruit of the clerics' right of association and do not have as their end the exercise of holy orders, but rather promoting the holiness of priests. Moreover, they can be public as well as private.In the latter case, they arise from a private agreement of the clerics, while clerical associations are always public.

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9. Cf. G. DALLA TORRE, commentary on c. 302, in P.V. PINTO (Ed.), *Commento al Codice...*, cit., pp. 176–177; J. HERVADA, *Pensamientos de un canonista...*, cit., p. 182; R. RODRÍGUEZ-OCAÑA, *Las asociaciones de clérigos...*, cit., p. 278; and S. PETTINATO, "Le associazioni dei fedeli," cit., p. 235.
10. Cf. J.L. GUTIÉRREZ, commentary on c. 302, in *Pamplona Com*; and R. RODRÍGUEZ-OCAÑA, *Las asociaciones de clérigos...*, cit., pp. 271 and 278.

303 **Consociationes, quarum sodales, in saeculo spiritum alicuius instituti religiosi participantes, sub altiore eiusdem instituti moderamine, vitam apostolicam ducunt et ad perfectionem christianam contendunt, tertii ordines dicuntur aliove congruenti nomine vocantur.**

Associations whose members live in the world but share in the spirit of some religious institute, under the overall direction of the same institute, and who lead an apostolic life and strive for Christian perfection, are known as third orders, or are called by some other suitable title.

SOURCES: c. 702; *ES* I, 35; *REU* 73 § 3

CROSS REFERENCES: cc.311, 317 § 2, 677 § 2

COMMENTARY

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Irrespective of the specific name given it, this canon contemplates a traditional type of association of the faithful: third orders.[1] Its characteristics are the following: *a*) they are under the direction of a religious institute (not only some religious orders, as in previous legislation: cf. c. 703 *CIC*/1917) and they follow its spirituality; *b*) they seek to achieve the objectives of the apostolate and Christian perfection; and *c*) their members live in the world.

The specific characteristic of these associations consists in following the spirituality of a religious institute. Among the faithful who live in the world, some can choose to orient their apostolate and their pursuit of holiness in light of the spirituality of a religious order or congregation. The guarantor of this spirituality is the religious institute to which this spirituality, as something proper to the institute, belongs, while the third order—although it naturally enjoys its autonomy[2]—is united with and, to a certain extent, under the direction of the respective institute.

This dependence (*altius moderamen*) is manifested, on the one hand, in the duty of the Superiors of the religious institutes to exercise

1. Cf. A. Vitale, art. "Terzi ordini secolari," in *Enciclopedia del diritto*, vol. 44 (Milan 1992), pp. 379–382; R. Naz, "Tiers ordre," in *Dictionnaire de Droit canonique*, vol. 7, Paris 1965, col. 1253–1255; and T. Vanzetto, "Commento a un canone: l'irradiarsi di un carisma oltre l'istituto di vita consacrata," in *Quaderni di Diritto ecclesiale*, 3 (1990), pp. 384–393.
2. Cf. *Comm.* 15 (1983), pp. 83ff.

special diligence so that the associations dependent upon them be informed with the authentic spirit of that religious family (c. 677 § 2), and, on the other hand, in oversight "che serve principalmente ad assicurare che nello svolgimento della loro attività i membri dei Terzi ordini rimangano fedeli ai principi e alle direttive dell'istituto religioso cui si ispira il Terz'ordine."[3] The concrete aspects of this dependence will normally be determined in the rules (the term applied to the fundamental norms of the third orders that are approved by the CICLSAL),[4] and in the statutes of each third order[5] (that are usually approved by the competent organs of the religious institute).

Although the terms used by the *CIC* to indicate the dependence of public associations in regard to ecclesiastical authority (*altior directio*) and to designate the subjection of the third order to the religious institute (*altius moderamen*) are not identical, they are very similar. This being the case, and given that overall direction or governance is a characteristic of public associations, it seems reasonable that their juridical regime would be equally applicable to the third orders, because they are also subject to overall direction, and, consequently, they possess less autonomy than private associations.[6] Moreover, to a certain extent, they participate in the public character of the institute to which they are united.[7]

These associations will be governed by their rules and statutes and the applicable norms of common law, among which are the provisions relative to public associations in general, and the specific prescriptions of c. 317 § 2 regarding the designation of the moderator and of the chaplain in associations connected to religious institutes.

The nature of these entities, however, characterized by their union with a religious institute, does not relieve them of the duty to collaborate in the apostolate of the particular churches where they carry out their activities (cf. c. 311).

With respect to the members of the third orders, they can be secular clerics as well as laypersons seeking to live the spirituality proper to a religious institute. And yet, it does not seem reasonable that a member of a

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3. CBI, "Istruzione in materia amministrativa," April 1, 1992, no. 115, in *Notiziario della CEI*, 1992.

4. Cf. E. BOAGA, "Terz'ordine secolare," in E. ANCILLI (Ed.), *Dizionario enciclopedico di spiritualità*, vol. 3 (Rome 1990), p. 2508.

5. Cf. *Comm.* 15 (1983), p. 84.

6. Cf. J. AMOS, "Associations of the Christian Faithful: History, Analysis and Evaluation," in *Canon Law Society of America. Proceedings of the Fiftieth annual Convention* (Washington 1989), p. 179.

7. Cf. J.T. MARTÍN DE AGAR, "Gerarchia e associazioni," in W. AYMANS-K.T. GERINGER-H. SCHMITZ (Eds.), *Das konsoziative Element in der Kirche. Akten des VI. internationalen Kongresses für kanonisches Recht, München, 14.–19. September 1987* (St. Ottilien 1989), p. 308, note 15. Dissenting from this opinion, W. AYMANS, *Kirchliche Vereinigungen* (Paderborn 1988), p. 42.

religious institute could at the same time be a member of a third order,[8] because one of the characteristics of these associations is that its members live in the world, while religious are characterized by their separation from the world, according to the end and nature of each institute (cf. *PC* 5).[9]

The competent organs of the Roman Curia over the third orders are CICLSAL and PCL, although the latter is competent only over the apostolic activity of these associations (cf. *PB* 111 and 134).

8. For the opposing point of view, cf. E. KNEAL, commentary on c. 307 § 3, in J.A. CORIDEN-T.J. GREEN-D. HEINTSCHEL (Eds.), *The Code of Canon Law: A Text and Commentary* (New York 1985), p. 248.
9. Cf. T. RINCÓN, commentary on tit. II "De institutis religiosis," in *Pamplona Com.*

304 **§ 1. Omnes christifidelium consociationes, sive publicae sive privatae, quocumque titulo seu nomine vocantur, sua habeant statuta, quibus definiantur consociationis finis seu obiectum sociale, sedes, regimen et condiciones ad partem in iisdem habendam requisitae, quibusque determinentur agendi rationes, attentis quidem temporis et loci necessitate vel utilitate.**

§ 2. Titulum seu nomen sibi eligant, temporis et loci usibus accommodatum, maxime ab ipso fine, quem intendunt, selectum.

§ 1. All associations of Christ's faithful, whether public or private, by whatever title or name they are called, are to have their own statutes. These are to define the purpose or social objective of the association, its centre, its governance and the conditions of membership. They are also to specify the manner of action of the association, paying due regard to what is necessary or useful in the circumstances of the time and place.

§ 2. Associations are to select for themselves a title or name which is in keeping with the practices of the time and place, especially one derived from the purpose they intend.

SOURCES: § 1: cc. 689 § 1, 697
§ 2: c. 688

CROSS REFERENCES: c.94

COMMENTARY

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1. *The statutes,*[1] *instruments that are* easily adapted to the specific needs and objectives of each association, are the norms that, in conso-

1. Cf. J. HENDRIKS, "Consociationum fidelium approbatio et statuta," in *Periodica* 73 (1984), pp. 180–186; idem, "Le associazioni dei fedeli e i loro statuti," in *Quaderni di Diritto ecclesiale* 3 (1990), pp. 371–376; A. BONI, "Le fonti di diritto nella struttura del nuovo CIC," in *Apollinaris*, 56 (1983), pp. 392–393; P.G. MARCUZZI, "Statuti e regolamenti," in *Apollinaris*, 60 (1987), pp. 527–543; E. MOLANO, *La autonomía privada en el ordenamiento canónico. Criterios para su delimitación material y formal* (Pamplona 1974), pp. 277–228; J. OTADUY GUERÍN, "Las características jurídicas de los estatutos," in W. AYMANS-K.T. GERINGER-H. SCHMITZ (Eds.), *Das konsoziative Element in der Kirche. Akten des VI. internationalen Kongresses für kanonisches Recht, München, 14.–19. September 1987* (St. Ottilien 1989), pp. 313ff; and R. BACCARI, "L'autonomia privata. Principio genetico delle associazioni nel Diritto Canónico," in ibid., pp. 462–463.

nance with the general discipline established by the Code, regulate and organize in a stable manner the life of an association, allowing it to find its own way in the life and in the law of the Church.[2]

2. The requirement that all associations of the faithful possess statutes cannot be considered arbitrary, but rather relates to a typical characteristic of associations: the *stability of their organization.* In order to achieve its end through its social activities, any association, from the time of its constitution, needs to organize. Therefore, it must order the juridical relationships arising and developed therein. All this organizing activity necessarily entails the birth of some internal rules that serve to ensure the manifestation of the collective will and its execution through the organs of governance and through the members.[3] The statutes fall within this sphere, being the fundamental and permanent norms determining the functioning of an association. The statutes do not only guarantee the existence of an organization proper to the association, but also allow temporal permanence, and maintenance of its identity, irrespective of any change in the personnel.[4] These norms possess stability in order to continuously and uniformly regulate the life of the associative entity.[5] Although the statutes can certainly be reformed, this does not substantially affect their stability, because the amendment procedure itself will be established in advance by the statutes. Through these characteristics of stability, transcendence, and reinforcement of unity, the statutes enjoy special significance in the law of associations, and constitute an element distinguishing between the associations of the faithful regulated by the *CIC* and other associative phenomena.[6]

3. The statutes of an association are directly binding on its members (c. 94 § 2). However, they also have an external, if quite limited, scope: once they are approved or reviewed, they also indirectly bind the authority, because they constitute a channel for, and limit on, the acts of the Hierarchy. They constitute a channel because many of the functions that are the competence of the authority will be carried out in the manner established in the statutes, and they constitute a limit because, by specifying the scope of autonomy of the association, they indirectly establish how far the ecclesiastical authority can reach in its actions.

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2. Cf. E. MOLANO, *La autonomía privada...*, cit., p. 272; and R. PAGÉ, "Associations of the faithful in the Church," in *The Jurist*, 47 (1987), p. 177.
3. Cf. P. BARILE, art. "Associazione (diritto di)," in *Enciclopedia del diritto*, vol. 3 (Milan 1958), p. 839.
4. CF. COMMISSIONE EPISCOPALE DELLA CEI PER IL LAICATO, "Nota pastorale. Le aggregazioni laicali nella Chiesa," April 28, 1993, no. 30, in *Notiziario della CEI*, 1993.
5. Cf. P. BARILE, "Associazione (diritto di)...," cit., p. 839.
6. Cf. COMMISSIONE EPISCOPALE DELLA CEI PER L'APOSTOLATO DEI LAICI, "Nota pastorale. Criteri di ecclesialità dei gruppi, movimenti, associazioni," March 22, 1981, no. 6, in *Enchiridion della Conferenza Episcopale Italiana*, vol. 3 (Bologna 1986), p. 316.

Moreover, the statutes also indirectly affect the other associations and the rest of the faithful, because they must each respect the association's conduct when it is in accordance with its statutes. If they then enter into relations with the association (for example, as beneficiaries of some social activity) they may demand that its activity conform to the provisions of the statutes.

4. The content and structure of these norms may be quite varied, depending upon the characteristics of each association.[7] In line with their function, the statutes are the appropriate instrument for determining these fundamental aspects of each association: its ends, its internal governance and scope of autonomy[8]; and also, its relationship with the ecclesiastical authority.[9]

The canon under discussion requires the existence of some minimum content: the determination of its social end or objective, the headquarters of the association, its governance, the conditions required for admission. The mode of action determined must be appropriate for the needs of time and place, and the title or name of the association should correspond to the mentality of the time and place, and preferably be inspired by the end being pursued.

In turn, particular law in some cases adds other necessary content: the CBI requires that the statutes set forth who is the legal representative of the association (it usually is the president) and who are the administrators (they are usually the same persons who make up the board of directors) and the composition and competencies of the plenary assembly of the members.[10] For its part, the CBS makes it a mandatory requirement that the statutes of national associations propose the concrete form that the connection between the association and the bishops' conference may take.[11]

5. In practice, the statutes usually begin by presenting the general information that allows due identification of the association. Its name or title is given, when it was constituted, its juridical nature (public or private), whether it has been granted juridical personality (public or private), the headquarters of the association (city, street, and number), the ends to be undertaken.

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7. Cf. L. MARTÍNEZ SISTACH, *Las asociaciones de fieles*, 2nd ed. (Barcelona 1987), pp. 36–48.

8. Cf. S. PETTINATO, "Associazioni private dei fedeli e 'debita relatio' con l'autorità ecclesiastica," in *Il Diritto ecclesiastico*, 97 (1986) I, p. 514.

9. CF. COMMISSIONE EPISCOPALE DELLA CEI PER IL LAICATO, "Nota pastorale. Le aggregazioni laicali nella Chiesa," cit., no. 30.

10. CBI, "Istruzione in materia amministrativa," April 1, 1992, no. 113, in *Notiziario della CEI*, 1992.

11. CBS, "Instrucción sobre asociaciones canónicas de ámbito nacional," April 24, 1986, no. 8, in *BOCEE* 10 (1986). For complementary norms promulgated by English language conferences of bishops, see Volume V, Appendix 3.

The statutes then set forth the following aspects:

a) *The members* Types of members are described, (*de jure*, ordinary, honorary, cooperators, supporters); conditions that must be met by the candidates are given as well as the procedure to be followed for admission: submission of an application for admission, whether it must be in writing, whether it must be endorsed by one or more members, the competent organs to review the application and to make the decision. Moreover, they indicate the rights and obligations of the members (cf. c. 306), the causes of and procedure for dismissal (cf. c. 308), the competent organ for deciding such and for handling a recourse, the conditions for voluntary departure (whether the member must send a letter to the president, stating his will to leave the association), etc.

b) *Structure and internal organization* The statutes list the administrative organs of the association (the president, the board of directors, the general assembly of members, the board of administration, the college of auditors, etc.). They also indicate the requirements for being a member thereof, who is competent to designate such members and how this is carried out, the term of office and the possibility of reelection, the competencies of the various organs and the reasons for cessation of various social undertakings.

c) *Chaplain or advisor of the association* It is determined who is competent to designate such, the functions performed, meetings in which he participates.

d) *Economic means* The statutes usually indicate the sources of income of the association (membership dues, donations, etc.), the initial amount of the association's patrimony, who is responsible for administering the assets (cf. cc. 319 § 1 and 325 § 1), which organs are competent to acts of administration, and who is competent to execute them. Additionally, they indicate the functions of the finance committee (cf. c. 1280), of the treasurer, of the administrator, and they regulate the principle procedures regarding the accounting books and the annual fiscal balance sheets (who prepares them, to whom they are submitted, who approves them), and they indicate the term of the fiscal year.

e) *Ecclesiastical authority* The statutes define to which authority the association is subordinate (cf. cc. 305, 312, 322 § 1 and 323) and they usually establish the ways in which the authority may intervene in the life of the association.

f) *Amending the statutes* The procedure is usually expressly established in the statutes (at times it is set forth in the regulations of the association), indicating the organ that may propose them, the one that approves them (general assembly, national congress, college of national delegates, etc.) and the required majority (usually a two-thirds vote in favor is required).

g) *Extinction* The reasons for extinction of an association (cf. cc. 123, 320 and 326 § 1), are given, and the procedure to be followed, the organ competent to make this decision (general assembly of the members, whether it must be in a special session, and the majority required, which is usually two thirds of those present), the disposition of its goods in this situation and the executors of the liquidation of the social patrimony (cc. 123 and 326 § 2.

h) *Additional provisions* There are usually some added at the end of the statutes, which indicate that for anything not provided for in them, the norms of the *CIC* and any norms given by the competent ecclesiastical authority will apply. At times, they also refer expressly to civil legislation on associations and ecclesiastical entities.

6. The statutes of associations of the faithful are submitted, as is applicable, for the approval or the *recognitio* of the competent ecclesiastical authority (cf. cc. 299 § 3, 313 and 322 § 2).

305 **§ 1. Omnes christifidelium consociationes subsunt vigilantiae auctoritatis ecclesiasticae competentis, cuius est curare ut in iisdem integritas fidei ac morum servetur, et invigilare ne in disciplinam ecclesiasticam abusus irrepant, cui itaque officium et ius competunt ad normam iuris et statutorum easdem invisendi; subsunt etiam eiusdem auctoritatis regimini secundum praescripta canonum, qui sequuntur.**

§ 2. Vigilantiae Sanctae Sedis subsunt consociationes cuiuslibet generis; vigilantiae Ordinarii loci subsunt consociationes dioecesanae necnon aliae consociationes, quatenus in dioecesi operam exercent.

§ 1. All associations of Christ's faithful are subject to the supervision of the competent ecclesiastical authority. This authority is to ensure that integrity of faith and morals is maintained in them and that abuses in ecclesiastical discipline do not creep in. The competent authority has therefore the duty and the right to visit these associations, in accordance with the law and the statutes. Associations are also subject to the governance of the same authority in accordance with the provisions of the canons which follow.

§ 2. Associations of every kind are subject to the supervision of the Holy See. Diocesan associations are subject to the supervision of the local Ordinary, as are other associations to the extent that they work in the diocese.

SOURCES: § 1: cc. 336 § 2, 690 § 1; SCCouncil Resol., 13 nov. 1920 (*AAS* 13 [1921] 135–144); PIUS PP. XI, Enc. *Maximam gravissimamque*, 18 ian, 1924 (*AAS* 16 [1924] 5–11)
§ 2: cc. 394 § 1, 690 § 2; SCCouncil Resol., 13 nov. 1920 (*AAS* 13 [1921] 135–144); *ES* I, 35; Signatura Normae, nov. 1968

CROSS REFERENCES: cc.205, 209, 323, 392, 397

COMMENTARY

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As a consequence of the function that pertains to the hierarchy in the people of God, associations of the faithful must also maintain a relationship with the ecclesiastical authority. This principle, expressly stated by

Vatican Council II (cf. *AA* 19 and 24), is set forth in general terms in this canon, while some specific aspects are established in other canons.

1. From the role played by the ecclesiastical authority, one can infer the existence of an area in which, by virtue of the bonds of dependence and subordination, the faithful are subject to the governance of the authority. Along with these areas, in which juridically binding mandates may be given, there are other areas, also within the Church, in which the faithful enjoy legitimate freedom. "In connection with the life of the Church and with the apostolate, there are areas in which responsibility irrevocably and personally (personality involves incommunicability) belongs to the individual faithful."[1] Although the power of governance or jurisdiction cannot be directly exercised over this area, the ecclesiastical authority carries out some functions in regard to it. As the last ecumenical Council teaches in connection with a specific aspect of the mission of the faithful in the Church, "the hierarchy's duty is to foster the lay apostolate, furnish it with principles and spiritual assistance, direct the exercise of the apostolate for the common good of the Church, and see to it that doctrine and order are safeguarded" (*AA* 24).

Starting with the existence of spheres of legitimate autonomy of the faithful (sectors in which the faithful can act as individuals as well as in associations), canonical doctrine after Vatican II sought to determine the main characteristics of the juridical regime governing associations. Once it was highlighted that the type of dependence upon the ecclesiastical authority will vary according to the nature of the association (public or private), the authors demonstrated that the juridical regime of private associations has freedom or autonomy as its fundamental characteristic,[2] which derives from the nature of the association, from the scope of its activities, and from the principles by which they are governed.[3] Consequently, it was stated that "the same criterion that governs relations between the faithful, considered as individuals, and the ecclesiastical authority, must govern relations between this authority and associations with private personality,"[4] and this also applies to other private associa-

1. A. DEL PORTILLO, *Fieles y laicos en la Iglesia. Bases de sus respectivos estatutos jurídicos*, 3rd ed. (Pamplona 1991), p. 67.

2. Cf. P.A. BONNET, "De christifidelium consociationum lineamentorum, iuxta Schema 'De Populo Dei' Codicis recogniti anni 1979, adumbratione," in *Periodica* 71 (1982), p. 545.

3. Cf. T. BERTONE, "Persona e struttura nella Chiesa (I diritti fondamentali dei fedeli)," in E. CAPPELLINI (Ed.), *Problemi e prospettive di Diritto canónico* (Brescia 1977), pp. 103ff; and E. MOLANO, *La autonomía privada en el ordenamiento canónico. Criterios para su delimitación material y formal* (Pamplona 1974), p. 278.

4. E. MOLANO, "La autonomía privada...," cit., p. 278. Cf. P.A. BONNET, "De christifidelium consociationum...," cit., p. 545.

tions. Therefore, private associations are also subject to the supervision and governance of the ecclesiastical authority.[5]

It can be readily seen that in this question of the relationship between associations and ecclesiastical authority, it is essential to determine the just balance between the two highly important ecclesial values of autonomy of the faithful (and of the associations constituted by them), and of the unity of the Church. Therefore, the same Council advocated the coordination and close connection of all the works of the apostolate under the direction of the bishop, such that all initiatives and institutions be coordinated in harmonious action (*CD* 17), while noting the requirement that said coordination be done with respect for the proper nature and the autonomy of each (*AA* 23 and 26).

2. Consistent with conciliar doctrine and with post-conciliar canonical development, c. 305 § 1 establishes a general norm regarding the relationship between associations and the ecclesiastical authority: all associations of the faithful, regardless of their type, are subject to the governance and supervision of the competent ecclesiastical authority. Thus, there is a distinction between two generic functions performed by the authority: governance over the entities and supervision. Although in a strict sense, supervision constitutes an aspect of the function of governance,[6] distinguishing supervision from governance highlights the *difference in impact* of each on the association. While the affirmation of subordination to governance indicates a direct subjection of the entity itself to the authority, the presence of supervision emphasizes that it is a matter of an *external* function exercised over the association, in order to guarantee unity of faith, morals, and ecclesiastical discipline; the ecclesiastical public order. Moreover, this distinction has practical use because, as we shall see, supervision and governance do not always pertain to the same authorities.

a) *Supervision* has its basis in the duty of ecclesiastical authority to ensure that integrity of faith and morals is maintained in associations and in the duty to keep abuses in ecclesiastical discipline from occurring. The content of supervision will be essentially focused upon these three fundamental points in order to guarantee ecclesial unity.

This function will be carried out mainly through the visits to the association. Pursuant to the provisions in c. 305 § 1, all associations, be they public or private, are subject to being visited: the authority has the *right* and the *duty* to supervise associations, and *therefore* (*itaque*, in the Latin text of the canon) it has the right and the duty to visit them in accordance with law and the statutes.[7]

5. Cf. A. DEL PORTILLO, "Ius associationis et associationes fidelium iuxta Concilii Vaticano II doctrinam," in *Ius canonicum*, 8 (1968), p. 14.

6. Cf. *Comm.* 12 (1980), p. 99.

7. Cf. S. PETTINATO, "Le associazioni dei fedeli," in *Il Codice del Vaticano II. Il fedele laico* (Bologna 1989), p. 260; and J.L. GUTIÉRREZ, commentary on c. 305, in *Pamplona Com.*

b) With respect to the *subordination to the governance of the authority*, the Code establishes different norms according to whether the associations are public or private. Therefore, in c. 305 itself, it is determined that subordination to governance is understood in accordance with "the provisions of the canons which follow." This specification indicates the will of the legislator to establish two different types of regimes of governance, according to the nature of the association. Consequently, any confusion between the two systems of governance will be avoided.[8]

3. There will be different competent authorities over associations, according to the type of association in question and the function which they must carry out. Thus, the Holy See exercises *governance functions* over universal or international associations; the bishops' conference, over national associations; and the diocesan bishop, over diocesan associations. With respect to associations dependent upon religious institutes, the provisions of cc. 311, 317 § 2, and 677 § 2 should be taken into account. On the other hand, the functions of *supervision* are assigned either to the Holy See, over all associations, or to the local Ordinary, for associations working within the scope of the diocese. This is because the Pastor who presides over a particular Church has the obligation to exercise certain functions in the community of which he is head, and, therefore, also over associations working in his territory, even if they have not been erected or recognized by him or he has not granted them juridic personality. However, no supervisory functions were intended for the bishops' conferences.[9]

4. Although the *CIC* distinguishes between the functions of supervision and of governance, in practice, some acts of supervision and of governance occur almost simultaneously in time and often are connected. Consider, for example, the act of recognition of an association (act of governance) as a result of a review of the statutes (act of supervision), the suppression of an association as a result of the exercise of the supervisory function over the ecclesial order, and the supervision over the execution of pious causes may entail acts of governance on the part of the local Ordinary, and so forth. Therefore it may happen that there arise conflicts of competency between the various authorities. In order to overcome them, one should always seek the solution that is most logical in practice and that allows, while respecting the proper autonomy of each association, coordination of the various levels of competence of the different ecclesiastical authorities.

8. Cf. *Comm.* 18 (1986), p. 340.

9. Cf. *Comm.* 12 (1980), p. 98ff; 15 (1983), p. 84; L. MARTÍNEZ SISTACH, "La autoridad competente para regular asociaciones supradiocesanas," in E. CORECCO-N. HERZOG-A. SCOLA, *Les droits fondamentaux du chrètien* (Freiburg S.-Freiburg i. Br.-Milan 1981), pp. 595–610; and J. RATZINGER-V. MESSORI, *Informe sobre la fe* (Madrid 1985), pp. 67ff.

306 **Ut quis consociationis iuribus atque privilegiis, indulgentiis aliisque gratiis spiritualibus eidemconsociationi concessis fruatur, necesse est et sufficit ut secundum iuris praescripta et propria consociationis statuta, in eandem valide receptus sit et ab eandem non sit legitime dimissus.**

To enjoy the rights and privileges, indulgences and other spiritual favours granted to an association, it is necessary and sufficient that a person be validly received into the association in accordance with the provisions of the law and with the association's own statutes, and be not lawfully dismissed from it.

SOURCES: c. 692; CodCom Resp. I, 4 ian. 1946 (*AAS* 38 [1946] 162); SCCouncil Ind., 24 maii 1950

CROSS REFERENCES: cc. 304, 307, 992–997

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Consistent with prior legislation (cf. c. 692 *CIC*/1917), this canon determines that valid admission of a member, which has not been revoked through lawful dismissal, is a sufficient requisite for benefiting from the spiritual goods of an association (indulgences and other spiritual graces) and for enjoying the rights and privileges proper to the association. This provision thus recognizes the effect of valid admission, namely, the person acquires the status of member of the association and, by virtue of the social connection, shares in everything that is proper to the association. The loss of membership status, through lawful dismissal or voluntary departure, extinguishes the juridical relationships that existed between the member and the association and between him and the other members, and excludes him from sharing in the spiritual goods of the association.

If there are different types of members in the association, the rights and obligations will naturally be different, according to the category to which they belong.

The rights of members are usually set forth in the statutes of the association and, naturally, refer to the social life of the association. Among others, are: the right to participate in ordinary and extraordinary meetings, which entails the right to be duly summoned, to be able to submit motions, to be heard, to vote on matters, to have an active and a passive

voice in the elections of the association, to be informed of association operations, etc. Additionally, the members have the right to participate in the pursuit of the social end and in the activities proper to the association, because one of the specific characteristics of associations is that members jointly seek to attain the end.

Although no reference is made to the obligations of members, it is obvious that they also arise at the time of valid admission and remain in force until lawful dismissal or voluntary resignation. If this issue is not discussed in this canon, this is due to the perspective adopted therein, which indicates the active position of the members in the association. As with the rights, the obligations of members are usually set forth in the statutes. It is generally provided that one of the obligations of members is to pay association dues. At other times, they indicate the obligation to accept any offices to which they are elected. However, the most important obligation essentially consists of collaborating in the activities and ends of the association.

With respect to indulgences (cf. cc. 992–997) in associations, the current practice is a consequence of the revision of the lists of indulgences granted to associations, undertaken in 1967 and 1968, as had been prescribed by the Apostolic Constitution *Indulgentiarum doctrina.*[1] The result of this revision was that the grants of indulgences that were not confirmed expired on December 31, 1968, and that only some plenary indulgences were granted to associations. It was believed that members of associations were already in optimal conditions for being able to easily and abundantly gain plenary and partial indulgences granted to all the faithful; and yet, in order to honor the associations, it was sufficient to grant some plenary indulgences. The Apostolic Penitentiary chose, for each association and for each member, some days in which a plenary indulgence could be gained: the day of their admission, the patron saint's day, and, in some cases, another day having a special relationship with the patron saint or with the activity of the association.[2] The rescript of concession establishes that, in order to gain this indulgence, the member must, at least privately, promise or renew the promise to faithfully observe the statutes of his association.[3] To this is added, naturally, the presence of the necessary conditions for gaining any plenary indulgence,[4] such as sacramental confession, eucharistic communion, a prayer for the Roman Pontiff, and an interior rejection of all sin, including venial sin.

1. Cf. PAUL VI, Ap. Const. *Indulgentiarum doctrina,* of January 1, 1967, norm 14, in *AAS* 59 (1967), p. 23.
2. Cf. G. SESSOLO, *Indulgenze e fervore di carità* (Padova 1989), p. 67.
3. Cf. *ibidem*, p. 67, note 76.
4. Cf. PA, *Enchiridion indulgentiarum,* 4th ed. (Vatican City 1999), norm 20 § 1.

307 **§ 1. Membrorum receptio fiat ad normam iuris acstatutorum uniuscuiusque consociationis.**

§ 2. Eadem persona adscribi potest pluribus consociationibus.

§ 3. Sodales institutorum religiosorum possunt consociationibus, ad normam iuris proprii, de consensu sui Superioris nomen dare.

§ 1. The admission of members is to take place in accordance with the law and with the statutes of each association.

§ 2. The same person can be enrolled in several associations.

§ 3. In accordance with their own law, members of religious institutes may, with the consent of their Superior, join associations.

SOURCES: § 1: c. 694 § 1; SCCouncil Resp., 18 mar. 1941
§ 2: c. 693 § 2
§ 3: c. 693 § 4

CROSS REFERENCES: c. 316 § 1

COMMENTARY

Luis Felipe Navarro

Generally, this canon directs that the admission of members to an association must take place in accordance with the law and with the statutes of each association (§ 1), that the same person can belong to several associations of the faithful (§ 2), and that members of religious institutes must have the consent of their Superiors in order to enroll in an association (§ 3).

These provisions seek to harmonize part of the content of the right of association of the faithful, namely, enrollment in associations, (cf. *AA* 19) with the circumstances of specific cases. The exercise of the right to enroll in associations necessarily fits together with the right of admission of the association, because, given that they are voluntary associations, the candidate must be accepted by the association. To be accepted, it is not sufficient that the candidate meet all due requirements, but it is also specified that the association must want to accept him, because, as has been rightly emphasized: "non esiste un dovere del gruppo di ac-

cogliere la domanda di tutti coloro che si trovino nel possesso dei requisiti richiesti dall'atto costitutivo."[1]

Moreover, the characteristics proper to the ecclesial status of the candidate may produce modifications to the exercise of this fundamental right that must be duly assessed. In the case of clerics, their right of association seems to be modified in the sense that they can join associations whose ends are consonant with their status as clerics (c. 278 § 1), while members of religious institutes may join associations compatible with their specific vocation.[2] Therefore, the provisions of § 3 of this canon do not constitute an undue limitation on the right of members of religious institutes to associate; rather, it is a guarantee of the charisma that corresponds to their vocation. The consent of the respective Superior is required in order to prevent membership in an association from being detrimental to the primary vocation of members of religious institutes: the seeking of holiness according to the spirit of the respective religious institute. This desire to ensure fidelity to the religious vocation is also manifested in a recent document from the Holy See that specifies the relationship existing between novices and religious institutes. It reaffirms the need to guarantee the identity proper to the members in their religious institutes. In this way novices, including those who come from movements and associations of the faithful, are exclusively dependent upon the religious superior.[3]

If, in principle, all the faithful may join an association of the faithful, in any given case, one must consider the provisions of the statutes of each association, where it is determined who can join and what requirements must be met. These aspects will vary from one association to another depending on their social end and the nature of the association. There are associations of clerics in which laypersons cannot be members, associations of laypersons from which clerics are excluded, associations of married faithful, associations of faithful practicing a given profession, and so forth. Some associations require a probationary period for the candidate, others admit them directly, after considering the membership application. In view of the large diversity that exists between associations, the Code establishes that admission is regulated by the statutes. These statutes will discuss requirements for admission, the manner in which this is carried

1. M.V. DE GIORGI, art. "Associazione, II) associazioni riconosciute," in *Enciclopedia giuridica Treccani*, vol. 3 (Rome 1988), p. 8.

2. Cf. A. DEL PORTILLO, "Le associazioni sacerdotali," in *Liber amicorum Monseigneur Onclin* (Glemboux 1976), pp. 133ff; A. DE LA HERA, "El derecho de asociación de los clérigos y sus limitaciones," in *Ius canonicum*, 23 (1983), pp. 171ff; RODRÍGUEZ-OCAÑA, *Las asociaciones de clérigos en la Iglesia* (Pamplona 1989); P.A. BONNET, "Il chierico ed il diritto-dovere di associarsi liberamente nella Chiesa," in *Il Diritto ecclesiastico*, 97 (1986), I, pp. 431ff; and S. DA COSTA GOMES, "O direito de associação na vida religiosa," in *Commentarium pro religiosis* 69 (1988), p. 267.

3. Cf. CICLSAL, *Normae directivae "Potissimum institutioni,"* February 2, 1990, no. 92, in *AAS* 82 (1990), pp. 523–524.

out, the conditions for its validity, and so on. In establishing these provisions, one will take into account not only the specific codal norms on associations, but also norms referring to juridic acts (and the circumstances effecting their validity and liciety), to freedom in the exercise of rights, to juridical capacity and capacity to act, etc. (cc. 97–99, 124–126).

Likewise, when drafting statutes, the provisions of § 2 of this canon must be respected. The faithful can belong to several associations of the faithful at the same time. However, it is conceivable that an association could require exclusive membership.

308 **Nemo legitime adscriptus a consociatione dimittatur, nisi iusta de causa ad normam iuris et statutorum.**

No one who was lawfully admitted is to be dismissed from an association except for a just reason, in accordance with the law and the statutes.

SOURCES: c. 696 § 1

CROSS REFERENCES: cc. 316 § 2

COMMENTARY

Luis Felipe Navarro

This provision seeks to avoid arbitrariness and injustice in the dismissal of members. To be consistent with this canon, the statutes must establish the causes for dismissal in such a way that the members know which actions and conditions result in dismissal from the association. Although the causes for dismissal may be very diverse, some being more serious than others, they all must be in proportion to their effect. This consists of dismissal from the association, against the member's will (otherwise, it would simply be the departure of the member, which, as with admission, must also be foreseen in the statutes). Among the causes for dismissal of a member can be found: opposition to the ends stated in the statutes and conduct incompatible with the social ends which cause serious moral or physical harm to the association.

When the competent ecclesiastical authority reviews or approves the corresponding statutes, it must consider the justice of the causes for dismissal that are foreseen. To this end, it must assess the type of association in question (public or private), its objective, the effects of the conduct considered as a possible cause for dismissal based on the ecclesial identity of the association, and other factors. In the case of public associations, the authority must confirm that the causes provided in c. 316 § 2 were included in the statutes. These causes may give the authority some direction in its assessment of the justice of the other causes for dismissal.

Together with the aforesaid causes, the statutes usually indicate, at least along general lines (the rest may be provided in the regulations) the procedure to be followed in the dismissal of a member, thus ensuring justice. Initiation of this procedure is normally entrusted to the association, and due process, including the right to be heard, shall be guaranteed the member whose dismissal is being sought. Also, the statutes shall determine the various time periods, any warnings (if these must be given)

which organ is competent to decide the issue (the general assembly, the board of directors), the formalities thereof (if the reasons must be given in writing, if confirmation by another social organ is necessary), and the manner in which it must be communicated to the member. Once the decree of dismissal is issued, the member subject to this action could have recourse to the competent authority. Statutes ordinarily also provide the possibility that the member may may have recourse before a social organ other than the one that decided upon the dismissal.

309 **Consociationibus legitime constitutis ius est, ad normam iuris et statutorum, edendi peculiares normas ipsam consociationem respicientes, celebrandi comitia, designandi moderatores, officiales, ministros atquebonorum administratores.**

Associations that are lawfully constituted have the right, in accordance with the law and the statutes, to make particular norms concerning the association, to hold meetings, to appoint moderators, officials, ministers and administrators of goods.

SOURCES: c. 697 § 1

CROSS REFERENCES: cc. 215, 317, 324

COMMENTARY

Luis Felipe Navarro

Canon 309 lists a series of rights that pertain to an association. These are: the right to enact particular norms, such as regulations for internal governance (the existence of which allows flexibility and streamlining in the procedure for review and approval of the statutes[1]) to hold meetings, and to appoint leaders. The common characteristic is that all these rights are related to the governance of the entity. In order to govern an association, it is necessary to be able to enact norms regarding the association or its activity, to hold meetings (for example, general meetings, or meetings of the organs of governance), and to appoint those who will fill the offices of management and administration of the association. The attribution and recognition of these rights is based on the fact that they are part of the content of the right of association If the faithful have the right to constitute an association through free agreement, to govern it, to draft the respective statutes (the *ius statuendi* is linked to the governance of the association) they will have the right to carry out all those functions that, without exceeding the scope of the autonomy of the association, are necessary and suitable for guiding the association towards achieving its social end. Obviously, the provisions of this canon will be specified and complemented by the provisions of the statutes, which will regulate in detail, for example, the designation of the various offices of the association (active

1. Cf. CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional*, April 24, 1986, no. 13, in *BOCEE* 10 (1986). For complementary norms promulgated by English language conferences of bishops, see Volume V, Appendix 3.

and passive subjects, procedure, voting), and the structure and internal organization of the association. The latter consists of organs of governance, meetings of the association, indication of their composition, competencies and frequency, the procedure for enacting particular norms. Likewise, the competencies generically attributed by this canon to all legitimately established associations, are subordinate to any conflicting or restrictive provisions that may be found in the canons regarding public associations.

310 **Consociatio privata quae uti persona iuridica non fuerit constituta, qua talis subiectum esse non potest obligationum et iurium; christifideles tamen in ea consociati coniunctim obligationes contrahere atque uti condomini et compossessores iura et bona acquirere et possidere possunt; quae iura et obligationes permandatarium seu procuratorem exercere valent.**

A private association which has not been constituted a juridical person cannot, as such, be the subject of duties and rights. However, Christ's faithful who are joined together in it can jointly contract obligations. As joint owners and joint possessors they can acquire and possess rights and goods. They can exercise these rights and obligations through a delegate or a proxy.

SOURCES: —

CROSS REFERENCES: cc. 113 § 2, 1481

COMMENTARY

Luis Felipe Navarro

1. The provisions of this canon, (according to which private associations lacking private juridic personality do not enjoy the status of being the subject of rights and obligations), are consistent with the provisions of c. 113 § 2, by virtue of which physical and juridic persons exhaust the possibilities of being subjects of rights and obligations.

However, upon a careful consideration of the matter, it is evident that the Code itself considers these associations as united entities with the imputation juridic relationships that cannot be attributed to an individual or to a juridic person (cf. cc. 298 § 2; 304, 306, 309). Therefore, a sector of canonical doctrine has held that with these assumptions one can speak of subjects without personality.[1] Being consistent with a true recognition of the right of association and with the aspects in which an association is considered as a unitary subject, it follows that denial of personality does

1. Cf. M. CONDORELLI, "Considerazioni problematiche sul concetto e sulla classificazione delle persone giuridiche nello 'Schema De Populo Dei,'" in *Il Diritto ecclesiastico* 91 (1980), I, p. 451; idem, *Destinazione di patrimoni e soggettività giuridica nel diritto canónico. Contributo allo studio degli enti non personificati* (Milan 1964); M. TEDESCHI, *Preliminari a uno studio dell'associazionismo spontaneo nella Chiesa* (Milan 1974), pp. 50ff; and A. DÍAZ DÍAZ, *Derecho fundamental de asociación en la Iglesia* (Pamplona 1972), pp. 226–227.

not mean the non-existence of a subject. As Condorelli has indicated, this canon can be "agevolmente interpretato nel senso della mancanza certo della personalità giuridica ma non necessariamente della soggettività nell'associazione non eretta; tanto più che il testo fa subito riferimento a diritti e doveri imputabili *coniunctim* ai consociati ed esercitabili esclusivamente *per mandatarium seu procuratorem*, ad una situazione cioè che sembra presentarsi piuttosto diversa da quella semplice comunione o della generica contitolarità di diritti e doveri."[2] To argue otherwise would be to deny reality.[3] However, this does not imply that in the canonical system every associative subject to an association must necessarily be a juridic person, because personality is only a special type of subjectivity.[4]

2. The fundamental consequences of not being a juridic person are that the faithful who are members of the association, can acquire and possess goods as co-owners and co-possessors, and can also enjoy rights and contract obligations jointly. This implies that there is not a patrimony proper to the association, recognized as such by the canonical system, which has important consequences for the regulation of these goods and for those of the members.[5]

3. From what is set forth in the canon under discussion, it would seem that the goods belong in common to the members, which from the point of view of civil law, would imply the possibility of their divisibility. However, the reality is different: the fact that these goods are intended for an association's common objectives and activities gives them unity. They can only be administered in accordance with statutory norms for the ordinary management of the association. Also, the relationship of each member to the goods is established with its totality, and not with a fraction

2. M. CONDORELLI, "Considerazioni problematiche sul concetto...," cit., p. 452. Cf. P. LOMBARDÍA, "Personas jurídicas públicas y privadas," in *Estudios de Derecho Canónico y Derecho Eclesiástico en homenaje al profesor Maldonado* (Madrid 1983), p. 333; idem, *Lecciones de Derecho Canónico* (Madrid 1984), p. 144; LÓPEZ ALARCÓN, "La personalidad jurídica civil de las asociaciones canónicas privadas," in *Revista Española de Derecho Canónico* 44 (1987), p. 394; G. LO CASTRO, *Il soggetto e i sui diritti nell'ordinamento canónico* (Milan 1985), p. 110; S. PETTINATO, "Le associazioni dei fedeli," in *Il Codice del Vaticano II. Il fedele laico* (Bologna 1989), pp. 254–255; and G. DALLA TORRE, *Considerazioni preliminari sui laici in Diritto canónico* (Modena 1983), p. 133.

3. Cf. M. CONDORELLI, "Considerazioni problematiche sul concetto...," cit., p. 453.

4. Cf. ibid., p. 453; P. LOMBARDÍA, "Personas jurídicas públicas...," cit., pp. 324–325; idem, "Persona jurídica en sentido lato y en sentido estricto," in *Acta Conventus Internationalis Canonistarum, Roma 20–25 maggio 1968* (Vatican City 1970), p. 179.

5. Cf. V. PRIETO MARTÍNEZ, "Iniciativa privada y personalidad jurídica: las personas jurídicas privadas," in *Ius canonicum* 25 (1985), p. 562.

thereof.[6] All of this leads one to think of the existence of a patrimony separate from that of each of the members. This is similar in nature to patrimonies in collective property, an institution that in the Italian juridical world, reduces to a matter of formal title the differences between the patrimony of recognized associations (endowed with juridic personality) and that of non-recognized associations (not endowed with personality).[7] If the existence of a patrimony of the association is admitted, the technical solutions employed in civil law may be applied and included in the statutes. It could be established that the fulfillment of the obligations assumed by the delegate are to be guaranteed by the patrimony of the association. Should there be added responsibilities, these responsibilities encumber the patrimony of the administrators (or that of whoever represented the association), in carrying out the act from which this obligation arose,[8] without the members as such being liable with their own personal patrimonies.[9]

4. The provisions of the canon also imply that private associations without juridic personality do not act in the process as a single subject, but as a group of physical persons, which is represented by a delegate or by a proxy.[10] This solution, although it allows that the group of members can act in the process, leaves unsolved some procedural problems, especially when the association is a defendant in a lawsuit.[11] In order to resolve them, some legislation recognizes that entities without personality have the capacity to be a party to a process, through the president's representation. Although, as some writers have argued,[12] a solution of this type would be preferable, the more recent decisions of organs of the Roman

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6. Cf. M.A. PUNZI NICOLÒ, "Il regime patrimoniale delle associazioni tra ecclesiasticità e non ecclesiasticità dei beni," in W. AYMANS-K.T. GERINGER-H. SCHMITZ (Eds.), *Das konsoziative Element in der Kirche. Akten des VI. internationalen Kongresses für kanonisches Recht, München, 14.–19. September 1987* (St. Ottilien 1989), pp. 583–594; and M. BASILE, ART. "Associazione. III) Associazioni non riconosciute," in *Enciclopedia giuridica Treccani*, vol. 3 (Rome 1988), p. 9.

7. Cf. M. BASILE, "Associazione," cit., p. 9.

8. Cf. ibid., p. 9; and A. TRABUCCHI, *Istituzioni di Diritto civile*, 30th ed. (Padova 1989), p. 114.

9. Cf. A. TRABUCCHI, *Istituzioni di Diritto civile*, cit., p. 114; and W. SCHULZ, commentary on c. 310, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1989).

10. Cf. V. PRIETO MARTÍNEZ, "Iniciativa privada y personalidad jurídica ...," cit., p. 509; and J. LLOBELL, "Associazioni non riconosciute e funzione giudiziaria," in *Monitor ecclesiasticus* 113 (1988), pp. 375ff.

11. Cf. BASILE, "Associazione," cit., pp. 4 and 5; F. GALGANO, *Associazioni non riconosciute*, 2nd ed. (Bologna-Rome 1976), pp. 190–191; C MANDRIOLI, *Corso di Diritto processuale civile*, vol. 1, 5th ed. (Turin 1985), p. 244; and A. DE LA OLIVA-M.A. FERNÁNDEZ, *Lecciones de Derecho procesual*, vol. I (Barcelona 1984), pp. 279ff.

12. Cf. F. ROBERTI, *De processibus*, vol. I, 4th ed. (Vatican City 1956), p. 513.

Curia make it more difficult to find channels for granting procedural capacity to entities without personality.[13]

It is obvious that these associations without personality will create problems in juridical matters, especially in property and procedural matters, because the absence of personality can prejudice the members as well as the association itself.[14] Moreover, these problems will arise not only in the canonical system but also in the civil order, when these associations acquire a relationship therewith. Thus, one of the main difficulties for these canonical entities will be obtaining civil recognition. Questions arise concerning this issue, such as the appropriateness of double recognition (civil and canonical), each being independent of the other; the presence of associations of the faithful with civil and not canonical personality, and so forth. Obviously, the problems that arise and the possible solutions will depend to a large extent on the norms of Ecclesiastical Law in the respective country,[15] which must be carefully considered by the bishops' conferences (some already have[16]) when issuing documents related to associations of the faithful.

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13. Cf. CPI, *Respuesta del 20 de junio de 1987*, in *AAS* 80 (1988), p. 1818; and Signatura, Decreto del 21 de noviembre de 1987, in *Comm.* 20 (1988), pp. 88–94. Cf. B. GANGOITI, "De iure standi in iudicio administrativo hierarchico et in Altera Sectione Signaturae Apostolicae laicorum paroecialium contra decretum episcopi, qui demolitionem paroecialis ecclesiae decernit," in *Angelicum* 65 (1988), pp. 392ff; J. LLOBELL, "Aspetti del diritto alla difesa, il risarcimento dei danni e altre questioni giurisdizionali in alcune recenti decisioni rotali," in *Ius Ecclesiae* 1 (1989), pp. 600–607; P. MONETA, "I soggetti nel giudizio amministrativo ecclesiastico," in *La giustizia amministrativa nella Chiesa* (Vatican City 1991), pp. 56ff; and A.M. PUNZI NICOLÒ, "Dinamiche interne e proiezioni esterne dei fenomeni associativi nella Chiesa," in *Ius Ecclesiae* 4 (1992), pp. 507–510.

14. Cf. P. LOMBARDÍA, "Persona jurídica en sentido lato...," cit., p. 179; E. MOLANO, *La autonomía privada en el ordenamiento canónico. Criterios para su delimitación material y formal* (Pamplona 1974), p. 258; and *Comm.* 18 (1986), p. 291.

15. Cf. A. DE LA HERA, "Las asociaciones eclesiásticas ante el Derecho estatal," in W. AYMANS-K.T. GERINGER-H. SCHMITZ (Eds.), *Das konsoziative Element...*, cit., pp. 771–794; L. PRIETO SANCHIS, "Las asociaciones religiosas en los países de lengua española," in ibid., pp. 865–889; B. PRIMETSHOFER, "Kirchliche Verbandsformen im staalichen Recht des deutschsprachigen Raumes," in ibid., pp. 847–863; P. CIPROTTI, "Le associazioni canoniche nel diritto italiano," in ibid., pp. 897–909; J. KRUKOSWKI, "The Situation of the Ecclesiastical Associations in Poland," in ibid., pp. 911–921; R.G.W. HUYSMANS, "Das katholische Vereinsrecht in den Bistümern der niederländischen Kirchenprovinz," in ibid., pp. 923–935; R. BROWN, "Report on Associations of the Faithful in England, Wales and Scotland and Ireland," in ibid., pp. 891–896; and T. MAURO, "La disciplina delle persone giuridiche. Norme sui beni ecclesiastici e sul loro regime con riferimento all'ordinamento statale," in *Monitor ecclesiasticus* 109 (1984), pp. 379ff.

16. Cf. CBI, "Istruzione in materia amministrativa," April 1, 1992, nos. 111–118, in *Notiziario della Cei*, 1992; and CBF, "Les associations canoniques nationales. Refléxions doctrinales," nos. 14 and 15, in *Bulletin Officiel de la Conférence des Évêques de France*, February 11, 1992.

311 **Sodales institutorum vitae consecrate quiconsociationibus suo instituto aliquo modo unitispraesunt aut assistunt, curent ut eadem consociationes operibus apostolatus in dioecesi exsistentibus adiutorium praebeant, cooperantes praesertim, sub directione Ordinarii loci, cum consociationibus quae ad apostolatum in dioecesi exercendum ordinantur.**

Members of institutes of consecrated life who preside over or assist associations which are joined in some way to their institute, are to ensure that these associations help the apostolic works existing in the diocese. They are especially to cooperate, under the direction of the local Ordinary, with associations which are directed to the exercise of the apostolate in the diocese.

SOURCES: *ES*, I, 35

CROSS REFERENCES: cc. 328, 677 § 2

COMMENTARY

Luis Felipe Navarro

This canon is consistent with the doctrine of Vatican Council II, which advocates coordination and a close connection between all works of the apostolate under the direction of the bishop, such that all initiatives and institutions cooperate in one harmonious action (cf. *CD* 17). It expressly provides that all associations that are joined to institutes of consecrated life must help in the diocesan apostolate, and that the members of the institute who preside over or assist the association are particularly responsible for this.

Some associations are uniquely characterized by their connection to an institute of consecrated life, but this does not relieve them of the duty to help in the apostolate of the particular Church where they carry out their activity. This is because, as with other associations, they are not ends in themselves, but must seek the good of the entire Church (cf. *AA* 19). However, the diocesan bishop must be aware that, as the Council itself states, this coordination must be carried out with respect for the proper nature and autonomy of each association (cf. *AA* 23 and 26). In the case of associations that are dependent upon institutes of consecrated life, that proper nature is determined by the spirit that pervades the association. Because this spirit is that of the respective institute, the diocesan bishop

must respect the specific functions of the superiors of the institute, which are carried out in the overall moderation of the association dependent upon them.

These functions of the authority find another limit in the *autonomy* that belongs to the association, in its governance as well as in its activity. This autonomy provides that the authority, in performing its respective duties, cannot exceed the limits established in the Code.

It should not be forgotten, however, that this autonomy must be able to be coordinated with the right of the ecclesiastical authority to *watch over* and to *make sure* to avoid scattering of efforts, and to *direct* the exercise of the apostolate toward the common good.

CAPUT II
De christifidelium consociationibus publicis

CHAPTER II
Public Associations of Christ's Faithful

312 **§ 1. Ad erigendas consociationes publicas auctoritas *competens est:***

1° pro consociationibus universalibus atque internationalibus Sancta Sedes;

2° pro consociationibus nationalibus, quae scilicet ex ipsa erectione destinantur ad actionem in tota natione exercendam, Episcoporum conferentia in suo territorio;

3° pro consociationibus dioecesanis, Episcopus dioecesanus in suo territorio, non vero Administrator dioecesanus, iis tamen consociationibus exceptis quarum erigendarum ius ex apostolico privilegio aliis reservatum est.

§ 2. Ad validam erectionem consociationis aut sectionis consociationis in dioecesi, etiamsi id vi privilegii apostolici fiat, requiritur consensus Episcopi dioecesani scripto datus; consensus tamen ab Episcopo dioecesano praestitus pro erectione domus instituti religiosi valet etiam ad erigendam in eadem domo vel ecclesia ei adnexa consociationem quaeillius instituti sit propria.

§ 1. The authority which is competent to establish public associations is:

1° the Holy See, for universal and international associations;

2° the Bishops' Conference in its own territory, for national associations which by their very establishment are intended for work throughout the whole nation;

3° the diocesan bishop, each in his own territory, but not the diocesan Administrator, for diocesan associations, with the exception, however, of associations the right to whose establishment is reserved to others by apostolic privilege.

§ 2. The written consent of the diocesan bishop is required for the valid establishment of an association or branch of an association in the diocese, even though it is done in virtue of an apostolic privilege. Permission, however, which is given by the diocesan bishop for the establishment of a house of a religious institute, is valid also for the establishment in the same house, or in a church attached to it, of an association which is proper to that institute.

SOURCES: § 1, 1°: c. 686 §§ 1 et 2; COETUS SANCTAE ROMANAE ECCLESIAE CARDINALIUM Resp. III, 2 (*AAS* 15 [1923] 390); Signatura Normae, nov. 1968
§ 1, 2°: c. 686 §§ 1 et 2; SCB Rescr., 28 iun. 1969; SCEP Rescr., 26 nov. 1978
§ 1, 3°: c. 686 §§ 2 et 4
§ 2: c. 686 § 3

CROSS REFERENCES: cc. 114, 116, 322

COMMENTARY

Luis Felipe Navarro

I. Although this canon determines the different authorities competent to establish the various types of public associations of the faithful, its function is more than this. Other canons regarding public as well as private associations also refer to this canon to establish who has a certain function of governance or supervision over an association (approval and review of the statutes, appointment of the president and the chaplain, confirmation of the ecclesiastical assistant, rendering of the financial accounts, granting private juridic personality, etc.). Therefore, what we shall state below about the competent ecclesiastical authorities must be understood as referring not only to public associations, but also, as is applicable to private associations.

1. International and universal associations depend upon the Holy See: it erects them (cf. c. 312 § 1), approves or examines their statutes, and grants private juridic personality, among other functions. This general principle is complemented by the provisions of *Pastor Bonus* in determining the dicasteries of the Roman Curia that have competency over associations of the faithful, by reason of the type of association in question, either according to the persons who are members, the social objective or the subject matter. These norms establish a distribution of competencies

which is the fruit of prior norms,[1] of decisions on conflicting competencies,[2] and of the practice followed in the Roman Curia. From all of this, there emerges a complex picture, which will require on more than a few occasions the creation of inter-dicasterial commissions[3] and appropriate channels of communication between the various organs of the Roman Curia. As we shall see, the provisions of *Pastor Bonus* are completed by subsequent norms.

With respect to associations of lay people, the competent dicastery is the Pontifical Council for the Laity (*PB* 134). However, international Catholic organizations are subject to the Secretariat of State (*PB* 41 § 2 and 134). The third orders, by virtue of the spirituality characterizing them, and associations that are established as a preliminary step towards their constitution as an institute of consecrated life or a society of apostolic life, are dependent upon the Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life (*PB* 111). However, with respect to the apostolate of the third orders, it is subject to the Pontifical Council for the Laity (*PB* 134). Moreover, although an association consists of lay people, in some respects, it is subject to other dicasteries. The Congregation for the Clergy is competent with regard to pious wills (*PB* 97) and the Pontifical Council for the Family is competent over the activity of associations the end of which is to serve the good of the family (*PB* 141 § 4). Because of the subject matter or the end, the following congregations also have competencies: the Congregation for Divine Worship and the Discipline of the Sacraments, which is competent to erect, approve, or review the statutes of any international associations having as their end to promote the liturgical apostolate, sacred music, singing, or art (*PB* 65) and to treat particular matters regarding liturgy and worship (*PB* 64). This has particular importance for confraternities (granting the faculty to celebrate with special solemnity the patronal feasts,[4] etc.) and for other movements (approving particular liturgical celebrations)[5]. The Congregation of Seminaries and Institutes of Study (*PB* 116 § 4)[6] also have competency, as do the Apostolic Penitentiary (*PB* 120), and the Pontifical Council for Social Com-

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1. Cf. Signatura, Normae "In fidelium associationes," November.1968, in *Enchiridion Vaticanum*, vol. 3 (Bologna 1977) pp. 378–381; and Secr. St., "Precisazioni al presidente del Pontificio Consiglio per i Laici circa la competenza del Consiglio stesso sulle associazioni di fedeli," prot. no. 114310, June 2, 1969, in *Enchiridion Vaticanum*, Supplementum 1 (Bologna 1990), pp. 334–335.

2. Cf. Signatura, "Decree regarding a conflict of competence between the S.Congr. for the Clergy and the Pontifical Council for the Laity," May 3, 1982, in *Comm.* 15 (1983), pp. 42–44.

3. Cf. G. DALLA TORRE, "Le commissioni," in C GULLO (Ed.), *La Curia romana nella Cost. Ap. "Pastor Bonus"* (Vatican City 1990), pp. 218–219.

4. Cf. CDWDS, "Il beato Pier Giorgio Frassati patrono delle Confraternite d'Italia," June 8, 1990, in *Rivista diocesana di Roma*, 1990, pp. 1201–1202.

5. Cf. CDWDS, "Notificazione sulle celebrazioni nei gruppi del 'Cammino neocatecumenale,'" in *L'Osservatore Romano*, December 24, 1988, p. 2.

6. Cf. JOHN PAUL II, Ap. Const. *Ex corde Ecclesiae*, August 15, 1990, no. 35 and note 34, in *AAS* 82 (1990), p. 1495.

munications (*PB* 170 § 3). Additionally, the Congregation for the Eastern Churches (*PB* 58) and the Congregation for the Evangelization of Peoples have competencies with respect to associations of the faithful.

If it is an association of clerics, competency will depend upon the Congregation for the Clergy (*PB* 97,1°), which is also competent with respect to the clergy in associations composing of clergy and lay people (*PB* 95 § 1).

More recently, another organ of the Roman Curia, the Commission *Ecclesia Dei*, received faculties for erecting some associations of the faithful that in the future may become institutes of consecrated life or societies of apostolic life It is also now capable of exercising over these associations, unless provided for otherwise, the functions that are the competency of the Holy See.[7]

2. The bishops' conference is competent to erect or recognize national associations. In the norms of particular law complementary to the *CIC*, we find some provisions specifying the organs of the bishops' conference that are competent to erect public associations of the faithful, or to approve the statutes (or to review them in the case of national private associations). In the Bishops' Conference of Brazil, these organs are the office of the President and the episcopal commission for pastoral activities; in Chile, the permanent committee, unless there is a reservation by the plenary Assembly. In Italy, these organs are: the office of the President, to initiate the procedure, and the permanent episcopal Council, to decide the matter.[8] In Spain, the plenary Assembly is competent to approve the statutes and to erect associations;[9] in France, the plenary Assembly, to approve the statutes.[10]

Normally, before submitting the decision on erection, approval, or review of the statutes to the plenary Assembly, a favorable opinion should be obtained from the organ in charge of juridical matters and from the episcopal commission that, because of the subject matter, will have a closer relationship with the association.[11]

In the aforementioned norms, there are also some provisions of interest with respect to national associations. It is usually stated that the ac-

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7. Cf. PCED, *Rescriptum ex audientia ss.mi quo Cardinali Praesidi Pontificiae Commissionis "Ecclesia Dei" speciales tribuuntur facultates, foras datur,* October 18, 1988, in *AAS* 82 (1990), p. 534.

8. Cf. J.T. MARTÍN DE AGAR, *Legislazione delle conferenze episcopali complementare al CIC* (Milan 1989), pp. 112, 151 and 375. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

9. Cf. CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional,* April 24, 1986, nos. 8 and 14, in *BOCEE* 10 (1986). For complementary norms promulgated by English-language conferences of bishops, see Appendix 3.

10. Cf. CBF, "Les associations canoniques nationales. Refléxions doctrinales," no. 10, in *Bulletin Officiel de la Conférence des Évêques de France,* February 11, 1992.

11. Cf. CBS, *Instrucción sobre asociaciones canónicas...,* cit., no. 8.

tual extension of an association over all or most of the national territory does not automatically make it a national association. In order to enjoy this title, a respective act is needed (erection, granting of private juridic personality, approval or recognition of the statutes) from the bishops' conference. Although normally a national association begins its life in a diocese (as a diocesan public or private association) and then spreads to others (with the erection of independent but equivalent associations, or as sections thereof), there is nothing to prevent some associations from being national associations from the start, without going through the diocesan association phase.[12] This will occur when the "objectives, by their very nature, involve the entire national territory."[13] Therefore, an application submitted to the bishops' conference may come from a diocesan association established in a large area of the national territory or from a group of the faithful that does not yet have any diocesan recognition.[14]

3. With regard to diocesan associations, the competent authority is the diocesan bishop; the diocesan Administrator cannot erect an association of this type. Evidently, those associations whose erection is reserved to other subjects by apostolic privilege are excluded from the faculties of the diocesan bishop. Additionally, those who are equivalent in law to the diocesan bishop, according to c. 381 § 2, such as territorial Abbots and Prelates, apostolic Prefects, Vicars, and Administrators, enjoy the faculties to erect, approve, and recognize statutes of associations of the faithful, within the scope in which they have jurisdiction (cf. cc. 134 § 1; 368, 370, 371, 381 § 2).

4. Although the territorial criterion is the usual way for defining the authorities competent to erect associations, we can also find equally competent authorities in jurisdictional structures of a personal nature. This is the case with the Ordinaries of military ordinariates, who, being equivalent in law to the diocesan bishop, may erect associations or recognize and approve statutes within the scope of their competence, especially for the apostolate in the military. In these jurisdictional structures, the faithful possess the same rights and obligations as in the diocese, and they are called to develop apostolic action, both as individuals and in association with others, mainly in military environments (as indicated by various statutes, consistent with *SMC* IX).[15] Therefore, they may constitute, govern, and join associations whose ends and activities fall within the scope of the military ordinariate. In fact, there exist associations of this type, some of

12. Cf. CBF, *Les associations canoniques nationales...*, cit., nos. 10 and 12; and CBS, *Instrucción sobre asociaciones canónicas...*, cit., no. 6.
13. Cf. CBS, *Instrucción sobre asociaciones canónicas...*, cit., no. 7 a.
14. Cf. CBF, *Les associations canoniques nationales...*, cit., no. 12.
15. Also cf.: Statutes of military Ordinariates of Bolivia, art. 21; of Brazil, art. 18; of Chile, art. 2; of Colombia, art. 22; of Ecuador, art. 15; of Peru, art. 18; of Portugal, art. 25; of Spain, art. 27; and of the United States, art. 13 (in E. BAURA, *Legislazione sugli ordinariati militari* (Milan 1992), pp. 122, 140, 160, 171, 180, 305–306, 330, 354 and 374, respectively).

which are part of the International Military Apostolate (an international Catholic organization, recognized by the Holy See).[16] Within this sphere there can also exist associations of clerics who are part of the ordinariate, as in the case of the Brotherhood of Chaplains, erected in the Spanish military ordinariate, for the spiritual and human care of priests who exercise their ministry for members of the military.[17] Other competent authorities are the bishops of personal and ritual dioceses (c. 372 § 2), and the Ordinaries of other personal jurisdictional structures. An example of this is the Ordinary of the ordinariate for Catholics of the Eastern rite living in France, who has the expressly recognized faculty to recognize groups and associations of the faithful of the Latin rite who seek to follow the traditions of an Eastern Church, celebrate its liturgy, and live its spirituality.[18] Additionally, the Prelates of personal prelatures (Ordinaries of a type of personal jurisdictional structure) are competent for associations related to the particular pastoral or missionary works of each personal prelature (cf. c. 294).

II. The purpose of §2 is to guarantee the exercise of the authority of the bishop in his diocese. It requires his prior written consent for the valid erection of an association or of a section of an association in the diocese. In the case of private diocesan associations, the CBF suggests not requiring new approval or review of the statutes by the bishop. In order to carry out their activities, it is sufficient to inform him and submit to him a copy of the statutes.[19] Also, in cases in which a national or international association wishes to begin its activities in a new diocese, the diocesan bishop must judge the suitability of the activity of that association, based on the pastoral needs of his diocese.[20]

Lastly, taking into account the existence of associations attached to religious institutes and respecting the fundamental aspects of norms enjoying a long tradition, this canon provides that the consent of the bishop for the erection of a house of a religious institute also serves as consent to erect in the same house, or in the attached church, an association that is proper to that institute.

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16. Cf. "Estatutos del Apostolado Militar internacional (A.M.I.)," arts. 1 and 3, in *La Iglesia particular en el medio castrense. A la luz de la Constitución apostólica "Spirituali militum curae." VI encuentro latinoamericano de pastoral castrense* (Bogota 1988), pp. 179–180; and *Estatutos del Ordinariato Militar de Austria*, a. 7 (in E. BAURA, *Legislazione sugli ordinariati* ..., cit., p. 103).

17. Cf. "Estatutos del Ordinariato militar de España," art. 23 in E. BAURA, *Legislazione sugli ordinariati...*, cit. p. 353.

18. Cf. SCEC, *Declaración interpretativa del decreto del 27 de julio de 1954*, April 30, 1986, in *AAS* 78 (1986), pp. 784–786.

19. Cf. CBF, *Les associations canoniques nationales...*, cit., no. 11.

20. Cf. JOHN PAUL II, *Lettera autografa del Sommo Pontefice Giovanni Paolo II a S.E. Mons. Paul Josef Cordes*, August 30, 1990, in *AAS* 82 (1990), pp. 1513–1514 and the accompanying note; and CBF, *Les associations canoniques nationales...*, cit., no. 11 and note 26.

313 **Consociatio publica itemque consociationum publicarum confoederatio ipso decreto quo ab auctoritate ecclesiastica ad normam can. 312 competenti erigitur, persona iuridica constituitur et missionem recipit, quatenus requiritur, ad fines quos ipsa sibi nomineEcclesiae persequendos proponit.**

A public association or a confederation of public associations is constituted a juridical person by the very decree by which it is established by the authority competent in accordance with can. 312. Moreover, in so far as is required, it thereby receives its mission to pursue, in the name of the Church, those ends which it proposes for itself.

SOURCES: c. 687; PIUS PP. XI, Let. *Dilecte fili*, 6 nov. 1929 (*AAS* 21 [1929] 665); PIUS PP. XI, Let. Ap. *Ex officiosis litteris*, 10 nov. 1933 (*AAS* 26 [1934] 628–633); PIUS PP. XI Enc. *Firmissimam constantiam*, 28 mar. 1937 (*AAS* 29 [1937] 191–193); *AA* 20; *ES* I, 35

CROSS REFERENCES: cc. 114, 116, 301

COMMENTARY

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1. A specific characteristic of public associations is that, through the decree of erection, they receive juridical personality. Although the canon does not specify the type of personality, consistent with what was foreseen in the drafting process,[1] and with the common opinion of canonical doctrine subsequent to the code,[2] particular legislation and some documents of some bishops' conferences expressly determine that it is a mat-

1. Cf. *Comm.* 15 (1983), p. 85; 17 (1985), p. 229; and c. 687 of the *Schema CIC* 1980.

2. Cf. F.J. URRUTIA, "Il libro II: le norme generali," in *La scuola cattolica* 112 (1984), p. 159, note 29; J. AMOS, "A Legal History of Associations of the Christian Faithful," in *Studia canonica* 21 (1987) p. 291; G. DALLA TORRE, *Considerazioni preliminari sui laici in Diritto canónico* (Modena 1983), pp. 121–126; and W. SCHULZ, "La posizione giuridica delle associazioni e la loro funzione nella Chiesa," in *Apollinaris* 59 (1986), p. 127.

ter of public juridical personality (cf. c. 116).[3] In this way, the logical parallel between associations and juridical persons is respected. A public association is a public juridical person and a private association can only obtain private juridical personality. In fact, decrees of erection of public associations expressly mention that they are endowed with public juridical personality.

2. Moreover, the canon adds that with the decree of erection, the association "missionem recipit, quatenus requiritur, ad fines quos ipsa sibi nomine Ecclesiae persequendos proponit," in this way taking up some proposals of post-conciliar canonical doctrine.[4]

Although the phrase *quatenus requiritur* was used in the early phases of drafting to distinguish between some associations that would receive a *missio*, and others a mandate, its presence in this canon must be understood in keeping with its *iter.* Not all public associations must receive a *missio*, but only those pursuing ends reserved *natura sua* to the authority, because, as Feliciani states, "se la missione è da considerarsi indispensabile per il perseguimento di fini riservati alla gerarchia essa non è, a rigor di termini, richiesta per raggiungere scopi di altro genere."[5] Granting a *missio* for ends not reserved to ecclesiastical authority "si qualificherebbe come un mandato *in rem propriam* che, nella specie, si rivelerebbe quanto meno superfluo,"[6] because, in that they are proper to the condition of the faithful, no concrete act of the authority is needed in order to pursue them. This interpretation allows one to find consistency between the work of the Commission revising the *CIC*, the provisions of the Council, and the suggestions of canonical doctrine subsequent to this conciliar assembly (cf. *AA* 20 and 24).[7] Therefore, it does not seem appro-

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3. Cf. CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional*, April 24, 1986, no. 12, in *BOCEE* 10 (1986); CBF, "Les associations canoniques nationales. Refléxions doctrinales," no. 5, in *Bulletin Officiel de la Conférence des Évêques de France*, February 11, 1992; CBI, "Istruzione in materia amministrativa," April 1, 1992, no. 110, in *Notiziario della CEI*, 1992; and COMMISSIONE EPISCOPALE DELLA CEI PER IL LAICATO, "Nota pastorale. Le aggregazioni laicali nella Chiesa," April 29, 1993, no. 28, in *Notiziario della CEI* 1993. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

4. Cf. A. DEL PORTILLO, "Ius associationis et associationes fidelium iuxta Concilii Vaticano II doctrinam," in *Ius canonicum* 8 (1968), pp. 18 and 24–25; W. SCHULZ, "Le norme canoniche sul dirittto di associazione e la loro riforma alla luce dell'insegnamento del Concilio Vaticano secondo," in *Apollinaris* 50 (1977), pp. 161 and 163–164; and A. DÍAZ DÍAZ, *Derecho fundamental de asociación en la Iglesia* (Pamplona 1972), pp. 195ff.

5. G. FELICIANI, "Le associazioni dei fedeli nella normativa canonica," in *Aggiornamenti sociali* 38 (1987), p. 690. Cf. J. HERVADA, *Pensamientos de un canonista en la hora presente* (Pamplona 1989), p. 181; and S. PETTINATO, "Le associazioni dei fedeli," in *Il Codice del Vaticano II. Il fedele laico* (Bologna 1989), p. 251.

6. S. PETTINATO, "Le associazioni dei fedeli," cit., p. 251.

7. Cf. *Comm.* 18 (1986), pp. 230–231 and 297ff; A. DEL PORTILLO, "Ius associationis...," cit., pp. 17–18, 24–25; W. SCHULZ, "Le norme canoniche...," cit., pp. 161, 163–164; and A. DÍAZ DÍAZ, *Derecho fundamental ...*, cit., pp. 195ff.

priate to maintain that there are two types of *missio*: one for reserved ends and another for non-reserved ends.[8]

This interpretation is not negated by the provisions of c. 116 § 1, according to which all public juridical persons are entrusted with a munus proprium intuitu boni publici. This *munus* exercised on behalf of the public good does not seem to us to be identical to the *missio* of the canon now under discussion. On one hand, this expression of c. 116 § 1 comes from the last revision of the *CIC*, and in previous versions no *missio* was mentioned as necessary for all public juridical persons[9] and, on the other hand, in the canons discussing public associations, it was foreseen that public associations without a *missio* were also public juridical persons. Therefore, it seems acceptable to maintain that, although all public juridical persons, and consequently public associations, receive a *munus*, not all these associations receive the *missio*. Thus, in order to coordinate all these elements, it can be stated that the *missio* of c. 313 is that which refers to the entrusting of some ends *natura sua* reserved to the authority, and that the *munus* of c. 116 § 1 is a more generic reality than the *missio*, and is necessary in all public associations. Therefore, the two concepts are not identical.

3. Additionally, it is worth considering whether or not there can be public associations of the faithful with a mandate. Because the *CIC* must be interpreted in light of Vatican Council II (which left no doubt as to the existence of associations with a mandate: cf. *AA* 24), and since canonical doctrine has generally maintained that such associations were public, (ecclesiastical in the usual denomination of that time[10]), some associations whose end is not of a reserved nature may receive a mandate from the ecclesiastical authority. This would be a matter of the situation contemplated in c. 301 § 2. In these associations, or at least in some of them, the ecclesiastical authority could give the mandate to accomplish some objectives that by their nature will continue being proper to the faithful, but in this case the authority joins more closely to its function (cf. *AA* 24).

4. Moreover, public associations, like other public juridical persons, act *nomine Ecclesiae*. In the initial wording of this canon, it was stated that these associations acted nomine ecclesiasticae auctoritatis,[11] an expression that was the object of animated discussions in the working

8. Cf. L. MARTÍNEZ SISTACH, "Asociaciones públicas y privadas de laicos," in *Ius canonicum* 26 (1986), pp. 163–165.

9. Cf. c. 73 § 1 of the *Schema canonum libri II 'De Populo Dei,'* in *Comm.* 12 (1980), p. 124; c. 113 § 1 of the *Schema CIC* of 1980; and c. 116 § 1 of the *Schema CIC* of 1982.

10. Cf. A. DEL PORTILLO, "Ius associationis...," cit., pp. 17 and 24–25; E. MOLANO, *La autonomía privada en el ordenamiento canónico. Criterios para su delimitación material y formal* (Pamplona 1974), pp. 264 and 271–272; W. SCHULZ, "Le norme canoniche...," cit., pp. 161 and 163–164; and A. DÍAZ DÍAZ, *Derecho fundamental...*, cit., p. 195.

11. Cf. c. 19, in *Comm.* 18 (1986), p. 230.

groups of the Commission revising the *CIC*.[12] Finally, a compromise formula was reached (*nomine Ecclesiae*), which is not very clear,[13] and which some authors have interpreted as equivalent to *agere nomine hierarchiae ecclesiasticae*.[14] However, this interpretation does not fit exactly with the tone of the debate, because of which the wording of the current c. 313 was amended. Consequent to the working sessions, there was an attempt to avoid the "near identification" of the authority with the public association, overly involving the authority of the Church in an association of this type.[15] With the words *nomine Ecclesiae*, there was a clear attempt to stress the distinction between the association and the authority and to point out the existence of a close relationship between the two, by virtue of which the authority assumes a special responsibility, which is manifested in the regulation of public associations, characterized by numerous interventions by the ecclesiastical authority.

The hearing of acting *nomine Ecclesiae* must be found, not in a literal interpretation, but in contemplating the phenomenon of public associations as a whole, with regard to both its norms, paying special attention to its relationship with the authority, as well as to its position in the structure of the people of God. Thus, it seems more in keeping with reality to maintain, while such activity is "in favore di scopi e utilizzando mezzi che impegnano in modo immediato la responsabilità dell'autorità ecclesiastica per il bene pubblico della Chiesa,"[16] or, as stated by Feliciani, that "l'associazione pubblica agisce 'nomine Ecclesiae' nel senso che la istituzione ecclesiastica, rappresentata dalla gerarchia, si assume la precisa responsabilità di garantire la autenticità ecclesiale della sua azione, diventandone, in ultima analisi, corresponsabile"[17] (without forgetting that the authority also has the duty to guarantee the ecclesial authenticity of private associa-

12. Cf. *Comm.* 12 (1980), p. 107–108; and 15 (1983), p. 85.
13. Cf. G. FELICIANI, "Le associazioni dei fedeli...," cit., p. 687.
14. Cf. L. MARTÍNEZ SISTACH, "Asociaciones públicas y privadas de laicos," cit., p. 162; idem, *Las asociaciones de fieles*, 2nd ed. (Barcelona 1987), p. 52–53; idem, "El derecho fundamental de la persona humana y del fiel a asociarse," in *Asociaciones canónicas de fieles. Simposio celebrado en Salamanca* (Salamanca 1987), p. 87; P. GIULIANI, *La distinzione fra associazioni pubbliche e associazioni private dei fedeli nel nuovo codice de Diritto canónico* (Rome 1986), p. 181; F. COCCOPALMERIO, "De persona iuridica iuxta schema Codicis novi," in *Periodica* 70 (1981), pp. 384–385; and G. DALLA TORRE, *Considerazioni preliminari...*, cit., p. 114.
15. Cf. *Comm.* 12 (1980), pp. 107–108.
16. COMMISSIONE EPISCOPALE DELLA CEI PER IL LAICATO, *Nota pastorale. Le aggregazioni laicali nella Chiesa*, cit., no. 28.
17. G. FELICIANI, "Il diritto di associazione e le possibilità della sua realizzazione nell'ordinamento canónico," in W. AYMANS—K.T. GERINGER-H. SCHMITZ (Eds.), *Das konsoziative Element in der Kirche. Akten des VI. internationalen Kongresses für kanonisches Recht, München, 14.–19. September 1987* (St. Ottilien 1989), p. 403.

tions, a task carried out through the functions of supervision and governance) and yet, that to act *nomine Ecclesiae* "signifie que la participation de l'association à la mission de l'Église revêt un caractère officiel."[18]

5. Finally, c. 313 includes the only reference of the *CIC* to confederations of associations: unions of various public associations. In keeping with the general pattern of norms, they are erected by the competent ecclesiastical authority; they enjoy public juridical personality,[19] (without the new personality necessarily absorbing that of each of the public associations that make up the confederation), and they receive a *missio* as needed.

18. CBF, "Les associations canoniques nationales...," cit., no. 5. Cf. W. SCHULZ, "La posizione giuridica...," cit., pp. 126–127.
19. Cf. W. SCHULZ, "La posizione giuridica...," cit., p. 128.

314 Cuiuslibet consociationis publicae statuta, eorumque recognitio vel mutatio, approbatione indigent auctoritatis ecclesiasticae cui competit consociationis erectio ad normam can. 312 § 1.

A public association or a confederation of public associations is constituted a juridical person by the very decree by which it is established by the authority competent in accordance with can. 312. Moreover, in so far as is required, it thereby receives its mission to pursue, in the name of the Church, those ends which it proposes for itself.

SOURCES: c. 689

CROSS REFERENCES: c. 117, 322 § 2

COMMENTARY

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In keeping with the norms on juridical persons (c. 117), this canon establishes that the statutes of public associations must always be approved by the competent ecclesiastical authority. Therefore, whether it is the faithful or the authority who compose the statutes,[1] they must be approved before the erection of a public association. In practice, the approval of statutes is quite similar to the act of reviewing statutes (cf. c. 299 § 3) and results in a *nihil obstat*. However, unlike the review or examination, in an approval, the faculties of intervention of the authority are greater, because before erecting the association, the authority must assess the usefulness of the end, also whether the means foreseen to achieve the end are truly adequate.

Normally the approval of the statutes is mentioned in the decree of erection, indicating the authority that approved them (mentioned in c. 312). Moreover, especially when they are new associations, it is normal to approve the statutes *ad experimentum*,[2] for three or five years, thus allowing them to be adapted later, upon further consideration of the collective experiences in this period of the life of the association.

The function of the competent ecclesiastical authority is not only to approve the statutes before erecting the entity, any subsequent amend-

1. Cf. CBP, *Normas gerais para regulamentação das associações de fiéis*, March 15, 1988 (Fatima 1988), art. 34.
2. Cf., e.g., PCL, *Servicio de información*, no. 12/92.

ments that may be sought must also be submitted to the competent ecclesiastical authority for their approval. This provision of the *CIC* is usually set forth in the final provisions of the statutes of public associations, which state that amendments do not take effect until they are approved by the competent authority. It can be argued that only substantial amendments must be approved by the authority, while for incidental ones, it would be sufficient to notify the authority, which could object if it finds them unsuitable.[3] However, it seems preferable to always require approval of the amendments to statutes, because, in such entities, the authority is more involved than in the case of private entities. Clearly, potential statutory reforms must be made in a climate of dialogue, such that the legitimate desires of the association are not thwarted, its nature is maintained, and the proper competencies of the authority that erected it are respected.

Approval of subsequent amendments to the statutes requires a new decree from the competent ecclesiastical authority. This type of decree includes first a series of "whereas" clauses: "whereas the association was erected by the competent authority, whereas the statutes were approved by the same authority, whereas the competent organs of the association have requested approval of the amendments to the statutes from the proper authority, through an application in which the request is explained and the specific amendments are set forth," and "whereas the competent organs have voted in favor or have approved said amendments." Then it is decreed that the statutes of the association (with an indication of the name and headquarters) are approved, in conformity with c. 314, according to the new text which is attached to the decree.

3. Cf. E. KNEAL, commentary on c. 314, in J.A. CORIDEN-T.J. GREEN-D. HEINTSCHEL (Eds.), *The Code of Canon Law: A Text and Commentary* (New York 1985), p. 251.

315 **Consociationes publicae incepta propriae indoli congrua sua sponte suscipere valent, eaedemque reguntur ad normam statutorum, sub altiore tamen directione uctoritatis ecclesiasticae, de qua in can. 312 § 1.**

Public associations can, on their own initiative, undertake projects which are appropriate to their character, and they are governed by the statutes, but under the higher direction of the ecclesiastical authority mentioned in can. 312 § 1.

SOURCES: PIUS PP. XI, Let. *Dilecte fili*, 6 nov. 1929 (*AAS* 21 [1929] 665); PIUS PP. XI, Let. Ap. *Ex Officiosis litteris*, 10 nov. 1933 (*AAS* 26 [1934] 628–633); PIUS PP. XI, Enc. *Firmissimam constantiam*, 28 mar. 1937 (*AAS* 29 [1937] 191–193); *AA* 20; *ES* I, 35

CROSS REFERENCES: cc. 216, 305, 317–319

COMMENTARY

Luis Felipe Navarro

1. This canon presents the coordination between the autonomy of the public association and its dependence upon the ecclesiastical authority. It proclaims the existence of a legitimate autonomy of public associations,[1] because according to the statutes the governance of the association strictly is the competence of its leaders and the organs of governance, who may freely promote any initiatives in keeping with the nature of the association. The same canon also adds that a public association is always under the higher direction of the ecclesiastical authority, which demonstrates that the autonomy it enjoys is less than that of private associations (which are never subject to the higher direction of the authority), as well the clear distinction between the higher direction and the direct, immediate governance of the association. They are two different duties that are the competencies of different subjects. Therefore, when the authority exercises the functions related to the higher direction, it must avoid that this higher direction overtakes direct governance of the public association, because its legitimate autonomy would be violated (these entities are freely governed according to the provisions of their

1. Cf. *Comm.* 18 (1986), p. 232; and CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional*, April 24, 1986, no. 17, in *BOCEE* 10 (1986). For complementary norms promulgated by English language conferences of bishops, see Volume V, Appendix 3.

statutes). This was stated by the episcopal Commission for the laity of the CBI: "questa superiore direzione non comporta l'esercizio di un diretto governo dell'associazione, ma quello del dovere-diritto di promozione e di indirizzo."[2] Moreover, it would be a contradiction for the same authority to approve the statutes, thus expressing its will that the association be governed according to these norms, and then later to encroach upon the sphere of autonomy that it had previously agreed to respect.

2. For its part, the association must not withdraw itself from the functions based on higher direction of the authority. Among these are included its intervention in appointments and removals, the possibility of naming a commissioner, control over the patrimony, and the approval of the statutes and its amendments (cf. cc. 314, 317–319). In addition to these functions foreseen in the *CIC*, the authority may establish norms specifying other aspects of the higher direction. Thus, the CBS provides that the higher direction can be exercised, in connection with documents of a public association, "in the prior notification, in the requirement for prior review and even for consent, according to the importance of the documents and their foreseeable effect on public opinion."[3] In turn, the CBP, in its *Normas gerais para regulamentação das associações de fiéis*[4]—norms that are very detailed—has provided that in public as well as private associations there can exist a supervisory organ, consisting of one or more persons, freely appointed by the competent ecclesiastical authority (a. 68). This organ represents the authority, thereby constituting a type of presence of the ecclesiastical authority in the association, and its purpose is to facilitate fulfillment of its pastoral mission (a. 69). Some of the competencies attributed to this organ are for supervision and others for the promotion of the intervention by the authority through extraordinary acts of governance. Among the former are supervision over preservation of the integrity of faith and morals, and respect for, ecclesiastical discipline (a. 11); over administration of the goods of the association (a. 78); over the execution of pious wills (a. 93 § 1) and over the rendering of financial accounts (a. 103). Among the latter, generally, it is provided that the supervisory organ can seek the intervention of the authority when it deems it appropriate, within the limits of what is established in the other provisions of the aforementioned *Normas gerais* (a. 69 § 3). Moreover, some situations are specifically foreseen in which the organ of supervision is called upon to urge the extraordinary intervention of the authority to carry out the following acts: the appointment of an administrative commission (a. 26 § 1,1°), the calling of a general assembly (a. 47), the declaration of the invalidity of acts undertaken in the exercise of an office

2. Commissione episcopale della CEI PER IL LAICATO, "Nota pastorale. Le aggregazioni laicali nella Chiesa," April 29, 1993, no. 28, in Notiziario della CEI, 1993.

3. CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional*, cit., no. 17.

4. Cf. CBP, *Normas gerais para regulamentação das associações de fiéis*, March 15, 1988 (Fatima 1988), art. 34.

of the association without due provision, and of illegitimate administration due to the expiration of the time of the mandate (a. 50 §§ 3 and 4). Other functions of the organ of supervision are receiving the oath of the administrators to properly and faithfully administer the goods (a. 79,1°), granting or denying before elections the *nihil obstat* for the lists of candidates (a. 52 § 4), and, in the absence of other competent persons, reading the confirmation of the election of the administrative organs and assessor in the taking of possession (a. 53 § 3 b).

In sum, in the norms of the CBP, it is provided that the functions of supervision that are the competency of the ecclesiastical authority may be delegated to the organ of supervision of the association. On the other hand, acts of extraordinary governance continue to be proper to the authority. Therefore, it only pertains to the organ of supervision to urge an act of governance by the authority.

Taking into account that the *CIC* foresees different means of exercising higher direction and supervision (appointment of a commissioner, dismissal of the president, canonical visitation, etc.), the creation of an organ with these functions and competencies cannot but be surprising. It has the potential to create a control that could easily restrict the autonomy of the association (consider the granting of the *nihil obstat* to candidates for association offices, or the—*de facto*—double rendering of accounts: to the organ of supervision and to the authority). Moreover, although it is not an organ of the association, in fact it is in such close connection to the life of the association that it would be difficult to consider it to be an organ apart from that association. If there is a desire to facilitate the pastoral function of the ecclesiastical authority and this is the purpose of said organ—a more just solution would be, for example, for the bishop to delegate some functions of supervision in the diocese to an organ of the diocesan structure.

As the nature and functions of this organ of supervision have been described, its existence in an association of the faithful (public or private) presupposes the free acceptance of the association.

3. Apart from the specific provisions indicated in particular law, the higher direction will normally consist of activities that stimulate and give guidance and which leave the entities with a sphere of autonomous determination.[5] In fact, the ecclesiastical authority often performs this task in, meetings, congresses, and such, in which the associations participate and in which solutions are sought for more urgent pastoral problems.

5. Cf. COMMISSIONE EPISCOPALE DELLA CEI PER IL LAICATO, *Nota pastorale. Le aggregazioni laicali nella Chiesa*, cit., no. 28; PETTINATO, "Le associazioni dei fedeli," in *Il Codice del Vaticano II. Il fedele laico* (Bologna 1989), p. 253.

316 **§ 1. Qui publice fidem catholicam abiecerit vel a communione ecclesiastica defecerit vel excommunicatione irrogata aut declarata irretitus sit, valide in consociationes publicas recipi nequit.**

§ 2. Qui legitime adscripti in casum inciderint de quo in § 1, praemissa monitione, a consociatione dimittantur, servatis eius statutis et salvo iure recursus ad auctoritatem ecclesiasticam, de qua in can. 312 § 1.

§ 1. A person who has publicly rejected the catholic faith, or has defected from ecclesiastical communion, or upon whom an excommunication has been imposed or declared, cannot validly be received into public associations.

§ 2. Those who have been lawfully enrolled but who fall into one of the categories mentioned in § 1, having been previously warned, are to be dismissed, in accordance with the statutes of the association, without prejudice to their right of recourse to the ecclesiastical authority mentioned in can. 312 § 1.

SOURCES: § 1: c. 693 § 1
§ 2: c. 696 § 2

CROSS REFERENCES: cc. 205, 307, 308, 697, 751, 915, 1312, 1331

COMMENTARY

Luis Felipe Navarro

1. Because of their close relationship with the authority, public associations have certain characteristics with respect to the admission and dismissal of members. Any person who has publicly defected from the faith or from ecclesiastical communion, or any person penalized with a *ferendae sententiae* or a declared *latae sententiae* excommunication cannot be admitted. Moreover, if these persons have been admitted, their admission is null and void.

The reason for this provision, which certainly relaxes the previous juridical system (it also prescribed the nullity of the admission of those who were under penalty of interdict or of suspension: cf. c. 693 § 1 *CIC*/1917), lies in the fact that the admission of one of the faithful who is in any of the aforementioned situations, apart from being null and void because it occured when the faithful's exercise of the right of association was sus-

pended (cf. c. 96), would constitute a reason for justified scandal and would decrease the ecclesial authenticity of the association.

Among the situations included in the public rejection of the faith and in the defection from ecclesiastical communion are found the cases of heresy, apostasy, and schism (cf. cc. 205 and 751). Additionally, it is reasonable, in keeping with the Magisterium of the Church, to include other particularly grave acts and conduct,[1] which are incompatible "with ecclesial communion as expressed and nurtured in the Eucharist."[2] Among these are: living in concubinage[3]; contracting a civil marriage only (cf. *FC* 82); and divorcing and marrying in a civil ceremony after having previously celebrated a canonical marriage with the bond of matrimony remaining (cf. *FC* 84). Thus, the particular law of the CBP has expressly stated that "não se admitam fiéis: 1°) que tenham manifesto comportamento moral ou religioso indigno, nos casos em que forem aplicáveis os cânones 915, 1007, 1184 § 1, 3°; 2) registrados ou casados apenas civilmente, nem os que vivam publicamente em simples mancebia."[4] On the other hand, a lack of religious practice must not be understood to be among the situations entailing nullity of admission, because, in itself, it does not imply a juridical break with ecclesiastical communion.[5] In turn, the statutes may better specify these situations and establish other similar ones.[6]

2. The *CIC*'s silence regarding the admission of non-Catholic members raises this question, especially if it is noted that this was discussed during the drafting of the code, and up to the last revision it was provided that these persons would be excluded from public associations.[7] Although the particular law of the CBS strictly provides that members of public associations "must necessarily be Catholic,"[8] and sector of post-codal doc-

1. Cf. *Comm.* 12 (1980), p. 113.
2. J. MANZANARES, "Las asociaciones canónicas de fieles. Su regulación jurídica," in *Asociaciones canónicas de fieles. Simposio celebrado en Salamanca* (Salamanca 1987), p. 141.
3. Cf. *Comm.* 12 (1980), p. 113.
4. CBP, *Normas gerais para regulamentação das associações de fiéis*, March 15, 1988 (Fatima 1988), art. 36 § 3.
5. Cf. L. MARTÍNEZ SISTACH, *Las asociaciones de fieles*, 2nd ed. (Barcelona 1987), p. 66; J. AMOS, *Associations of the Christian Faithful in the 1983 Code of Canon Law: a canonical Analysis and Evaluation* (Washington 1986), p. 251; and J. HERVADA, commentary on c. 205, in *Pamplona Com.*
6. Cf. J. BOGARÍN DÍAZ, "Los católicos unidos irregularmente en la ordenación jurídica de las cofradías de nazarenos," in *Revista Española de Derecho Canónico* 48 (1991), pp. 81–127.
7. Cf. *Comm.* 12 (1980), pp. 100–101; 15 (1983), pp. 84ff; and 18 (1986), p. 219.
8. CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional*, April 24, 1986, no. 15, in *BOCEE* 10 (1986). For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

trine is of the same opinion,[9] at most conceding to non-Catholics the possibility of a special statute (*status hospitis*)[10] or permitting them to collaborate in the activities of the association, depending on its ends, it seems that the best solution would be to consider each specific case. Only in this way will it be possible to judge if a non-Catholic can be a member of a given public association. In order to avoid any scandal or harm to the faith of the Catholic members, the authority that approves the statutes must carefully assess the nature of the end undertaken by the association. Iit is quite different if the end is charity or Christian promotion of the temporal order, or if it is worship.[11] It must also consider the type of non-Catholic desiring admission (consider the case of catechumens, who certainly enjoy some rights, among which is the right of association),[12] in which category of membership they will be included, and the ecclesial and ecumenical effects of said admission.[13]

3. Regarding the dismissal of a member that has committed any of the suppositions foreseen in § 1 (c. 316 § 2), it must be a publicly-known fact,[14] the member must have been previously warned, and the procedure contemplated in the statutes must be followed. Naturally, recourse against the decision can always be had before the competent authority (the one that erected the association).

9. Cf. G. DALLA TORRE, commentary on c. 316, in P.V. PINTO (Ed.), *Commento al Codice di Diritto canónico* (Rome 1985), p. 185; L. MARTÍNEZ SISTACH, *Las asociaciones de fieles*, cit., p. 67; and J. MANZANARES, "Las asociaciones canónicas de fieles...," cit., p. 138ff.

10. Cf. H. HEINEMANN, "Die Mitgliedschaft nichtkatolischer Christen in kirchlichen Vereinen," in *Archiv für katholisches Kirchenrect* 152 (1984), pp. 418ff.

11. Cf. ibid., pp. 424ff; P. VALDRINI, "Les personnes juridiques et les communautés associatives," in *Droit canonique* (Paris 1989), p. 143; and W. SCHULZ, "Cristiani non cattolici come membri di associazioni cattoliche," in *Studi in onore di Lorenzo Spinelli*, vol. III (Modena s.d.), pp. 1074–1075.

12. Cf. P. LOMBARDÍA, "Estatuto jurídico del catecúmeno según los textos del Concilio Vaticano II," in idem, *Escritos de Derecho Canónico*, vol. II (Pamplona 1973), p. 265; and G. DALLA TORRE, ART. "Infedeli," in *Enciclopedia del diritto*, vol. 21 (Milan 1971), p. 425.

13. Cf. W. SCHULZ, "Cristiani non cattolici...," cit., pp. 1075–1076.

14. Cf. J. AMOS, *Associations of the Christian Faithful in the 1983 Code...*, cit., p. 251.

317 **§ 1. Nisi aliud in statutis praevideatur, auctoritatis ecclesiasticae, de qua in can. 312 § 1, est consociationis publicae moderatorem ab ipsa consociatione publica electum confirmare aut praesentatum instituere aut iure proprio nominare; cappellanum vero seu assistentem ecclesiasticum, auditis ubi id expediat consociationis officialibus maioribus, nominat auctoritas ecclesiastica.**

§ 2. Norma in § 1 statuta valet etiam pro consociationibus a sodalibus institutorum religiosorum vi apostolici privilegii extra proprias ecclesias vel domos erectis; in consociationibus vero a sodalibus institutorum religiosorum in propria ecclesia vel domo erectis, nominatio aut confirmatio moderatoris et cappellani pertinet ad Superiorem instituti, ad normam statutorum.

§ 3. In consociationibus quae non sunt clericales, laici exercere valent munus moderatoris; cappellanus seu assistens ecclesiasticus ad illud munus ne assumatur, nisi aliud in statutis caveatur.

§ 4. In publicis christifidelium consociationibus quae directe ad apostolatum exercendum ordinantur, moderatores ne ii sint, qui in factionibus politicis officium directionis adimplent.

§ 1. Unless the statutes provide otherwise, it belongs to the ecclesiastical authority mentioned in can. 312 § 1 to confirm the moderator of a public association on election, or to appoint the moderator on presentation, or by its own right to appoint the moderator. The same authority appoints the chaplain or ecclesiastical assistant, after consulting the senior officials of the association, wherever this is expedient.

§ 2. The norm of § 1 is also valid for associations which members of religious institutes, by apostolic privilege, establish outside their own churches or houses. In associations which members of religious institutes establish in their own church or house, the appointment or confirmation of the moderator and chaplain belongs to the Superior of the institute, in accordance with the statutes.

§ 3. The laity can be moderators of associations which are not clerical. The chaplain or ecclesiastical assistant is not to be the moderator, unless the statutes provide otherwise.

§ 4. Those who hold an office of direction in political parties are not to be moderators in public associations of Christ's faithful which are directly ordered to the exercise of the apostolate.

SOURCES: § 1: c. 698 § 1
§ 2: c. 698 § 1
§ 4: PIUS PP. XI, Let. *Dilecte fili*, 6 nov. 1929 (*AAS* 21 [1929] 665), PIUS PP. XI, Let. *Dobbiamo intrattenerla*, 26 apr. 1931 (*AAS* 23 [1931] 148); PIUS PP. XI, Enc. *Non abbiamo bisogno*, 29 iun. 1931 (*AAS* 23 [1931] 294–296)

CROSS REFERENCES: cc. 119, 147, 324, 564, 565

COMMENTARY

Luis Felipe Navarro

This canon specifies various aspects of the higher direction exercised by the competent ecclesiastical authority over associations, namely, its intervention in the appointment of the moderator and of the chaplain of the association.

With regard to the appointment of the moderator of the association, unless provided otherwise in the statutes, it will fall upon the competent ecclesiastical authority to confirm the person elected, to appoint him upon presentation, or simply to name him by its own right (§ 1).

When performing these acts, the authority must take into account some of the particular features of the type of association in question. If it is clerical or consists of clerics (cc. 302 and 278 respectively), a layperson may not carry out that function, because in both cases the moderator must be a cleric. In the case of associations directly pursuing the exercise of the apostolate, the moderator may not be a person holding an office of direction in political parties (§ 4). This provision seeks to protect the Church, to avoid involving her in temporal matters, because, since an association acts in the name of the Church, if the moderator is at the same time a political leader, one could easily fail to adequately distinguish between the conduct of the moderator as a member of the faithful and a citizen—with personal responsibility—and as the moderator of a public association acting in the name of the Church (cf. *GS* 43).[1] Moreover, in non-clerical associations, normally the chaplain or ecclesiastical assistant will not at the same time be the moderator (§ 3), because it is understood that it is the

1. Cf. J.L. GUTIÉRREZ, commentary on c. 327, in *Pamplona Com.*

laity who must assume the responsibilities that belong to them in the direction of associations.

Given that the authority has numerous ways to intervene, it will be the statutes that provide which act of the authority is required. The CBS determines that "the directors of the association are freely appointed by its members, pursuant to the statutes, but taking into account the provisions of c. 317 § 3 and 4" and that the election must be confirmed "by the Bishops' Conference that will do so through its Permanent Commission."[2]

The appointment of the chaplain or ecclesiastical assistant or counselor of a public association is always the responsibility of the ecclesiastical authority, and if this is judged to be appropriate, the association may only be heard through its directors (§ 1). Although the *CIC* does not state it expressly, among the so-called "officiales maiores" or directors, the moderator or director of the association should be included. The chaplain, who is always necessary in public associations, will be a presbyter (cf. c. 564).[3] The CBS specifies that, before the chaplain or the counselor is named, the directors of the association will be heard, and authorization will be obtained from the respective bishop or major superior.[4]

In paragraph two are discussed both matters (appointment or confirmation of the moderator and of the chaplain of a public association) with respect to associations that depend upon religious institutes. A distinction is made between associations established outside of the religious house and church or in them. In the first case, the competent authority will be that of c. 312 § 1; in the second case, the superior of the institute, according to the norm of the statutes. Thus, the traditional autonomy. reflecting the proper autonomy of the religious institute, of associations erected by religious in their houses and churches continues to be respected.

The statutes of national and international associations determine the authorities that are competent to appoint other chaplains or ecclesiastical assistants for the diocesan or national sections. These norms usually specify the functions of the ecclesiastical assistants and the characteristics of their participation in the organs of the association (whether they only have a consultative vote, whether they have the right to a voice, but not to a vote, etc.) and their relationship with the local pastors. If the association has a church, usually the counselor or the chaplain has the proper functions of a rector,[5] and therefore the canons discussing the rectors of churches apply (cc. 556–563).

2. Cf. CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional*, April 24, 1986, no. 19, in *BOCEE* 10 (1986). For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

3. Cf. CBP, *Normas gerais para regulamentação das associações de fiéis*, March 15, 1988 (Fatima 1988), art. 70 § 2.

4. Cf. CBS, *Instrucción sobre asociaciones canónicas...*, cit., no. 16.

5. Cf. CBP, *Normas gerais para regulamentação...*, cit. art. 70 § 5.

318 **§ 1. In specialibus adiunctis, ubi graves rationes id requirant, potest ecclesiastica auctoritas, de qua in can. 312 § 1, designare commissarium, qui eius nomine consociationem ad tempus moderetur.**

§ 2. Moderatorem consociationis publicae iusta de causa removere potest qui eum nominavit aut confirmavit, auditis tamen tum ipso moderatore tum consociationis officialibus maioribus ad normam statutorum; cappellanum vero removere potest, ad normam cann. 192–195, qui eum nominavit.

§ 1. In special circumstances, when serious reasons so require, the ecclesiastical authority mentioned in can. 312 § 1 can appoint a commissioner to direct the association in its name for the time being.

§ 2. The moderator of a public association may be removed for a just reason, by the person who made the appointment or the confirmation, but the moderator himself or herself and the senior officials of the association must be consulted, in accordance with the statutes. The chaplain can, however, be removed by the person who appointed him, in accordance with cann. 192–195.

SOURCES: § 2: c. 698 § 3

CROSS REFERENCES: cc. 194, 572

COMMENTARY

Luis Felipe Navarro

Within the scope of the higher direction, c. 318 attributes to the authority some important powers of intervention in the governance of an association: the appointment of a commissioner and the removal of the moderator and of the chaplain. With respect to the activities proper to the higher direction, they cannot be applied to private associations, because they are governed by different norms.

1. Paragraph one covers the appointment of a commissioner to govern the association in exceptional or emergency circumstances.[1] It is an extraordinary measure that supposes that the competent authority assumes the governance of an association through a commissioner. Inas-

1. Cf. J.L. GUTIÉRREZ, commentary on c. 327, in *Pamplona Com.*

much as the commissioner acts in the name of the authority (*eius nomine*), he must carry out the directions given by this authority. However, he cannot act arbitrarily; his conduct will always be limited both by the provisions of the statutes, which remain in force and were approved by the same authority, and by the nature and ends of the association which cannot be changed.

The circumstances justifying the appointment of a commissioner must be grave. They include: grave scandal caused by the conduct of the association, a critical economic situation as a result of mismanagement of the patrimony, or grave internal divisions. A serious illness or disability on the part of the moderator are not sufficient reasons for the appointment of a commissioner.[2] Situations may arise, however, which cause the obligatory resignation of the moderator and the subsequent appointment of a new one, or cause the remaining directors to assume temporarily the administration of the association. It is customary for the statutes to provide that in the absence of the moderator or if he is impeded, the vice-moderator or another member of the board of directors of the association will assume his duties

Once appointed, the commissioner, after clarifying the association's situation—this task is especially important when there are patrimonial problems[3]—will seek to correct the serious failings preventing the association from achieving its ends.

Once the reasons justifying the presence of a commissioner no longer exist, the competent authority must remove him.To keep him longer would not be legitimate, because it would violate the autonomy of governance of the association.

In short, the goal of the appointment of a commissioner is not to usurp the governance of an association, but to be able to reorient it in those aspects that had distanced it from its original purpose.

2. In addition to the appointment of a commissioner, the competent ecclesiastical authority, with just cause and in emergency situations,[4] may remove the moderator of the association (§ 2). Although the situation of the removal of a moderator that has been appointed by the authority after presentation by the association is not mentioned, it is evident that the provisions of this paragraph apply here.[5] The procedure for removal should be established in the statutes and the procedure must always guarantee

2. For the opposing view, cf. E. KNEAL, commentary on c. 318 § 1, in J.A. CORIDEN-T.J. GREEN-D. HEINTSCHEL (Eds.), *The Code of Canon Law: A Text and Commentary* (New York 1985), p. 253.

3. Cf. R. PAGÉ, "Associations of the faithful in the Church," in *The Jurist* 47 (1987), p. 189.

4. Cf. CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional*, April 24, 1986, no. 16, in *BOCEE* 10 (1986). For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

5. Cf. J.L. GUTIÉRREZ, commentary on c. 318, in *Pamplona Com.*

that the moderator and the other directors may be heard by the competent authority. For removal, it is required that there be just cause, but the *CIC* does not indicate what these causes are. However, based on statements inrated in c. 316 § 1, and on the duties of the moderator, it can be sufficient, for example, for the moderator to have publicly defected from the Catholic faith and communion with the Church, for him to lead a life contrary to good morals, or for him to prove himself to be clearly incompetent to carry out his charge (lack of aptitude for governance, lack of dedication, etc.). The discipline of the code determines that, unless provided otherwise in the statutes, there exists no right of association to remove the moderator, since it neither has an exclusive right to appoint him. However, it should be acknowledged that the association has the right to ask the authority to initiate the removal process, and this right can be set forth in the statutes.

3. The authority may also remove the chaplain or ecclesiastical assistant (§ 2). There must be just reason, and there must be more or less gravity, (depending on the time, fixed or indeterminate) established for holding that office. The causes for removal are established in the law itself: loss of the clerical state, public defection from the faith or from the communion of the Church, and attempting marriage, even a civil one (cf. c. 194). Removal may take place through a procedure[6] proving just cause. In this procedure, the chaplain or ecclesiastical assistant, the moderator, and the other directors must at least be heard. Likewise, we believe that the association has the right to ask that the authority remove the chaplain, but it can not remove him on its own.

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6. For the opposing view, cf. E. KNEAL, commentary on c. 318 § 2, in J.A. CORIDEN-T.J. GREEN-D. HEINTSCHEL (Eds.), *The Code of Canon Law...*, cit., p. 253.

319 **§ 1. Consociatio publica legitime erecta, nisi aliudcautum sit, bonaquae possidet ad normamstatutorum administrat sub superiore directione auctoritatis ecclesiasticae de qua in can. 312 § 1, cui quotannis administrationis rationem reddere debet.**

§ 2. Oblationum quoque et eleemosynarum, quas collegerit, eidem auctoritati fidelem erogationis rationem reddere debet.

§ 1. Unless otherwise provided, a lawfully established public association administers the goods it possesses, in accordance with the statutes, and under the overall direction of the ecclesiastical authority mentioned in can. 312 § 1. It must give a yearly account to this authority.

§ 2. The association must also faithfully account to the same authority for the disbursement of contributions and alms which it has collected.

SOURCES: § 1: c. 691 § 1
§ 2: c. 691 § 5

CROSS REFERENCES: cc. 325, 1257 § 1, 1276 § 1, 1284 § 2, 8°, 1299, 1301

COMMENTARY

Luis Felipe Navarro

One of the duties fulfilled by the competent ecclesiastical authority in connection with public associations is to exercise higher direction in the administration of the goods of the association and to receive yearly accounts on the administration of its patrimony (c. 319 § 1).

As the goods of a public association are ecclesiastical (cf. c. 1257 § 1),[1] unless provided otherwise, they are administered according to the statutes and under the higher direction of the ecclesiastical authority.

1. Cf. M.G. Moreno Antón, "Algunas consideraciones en torno al concepto de bienes eclesiásticos en el CIC de 1983," in *Revista Española de Derecho Canónico* 44 (1987), pp. 71–92; S. Bueno Salinas, *La noción de persona jurídica en el Derecho canónico* (Barcelona 1985), pp. 227ff; M.A. Punzi Nicolò, "Il regime patrimoniale delle associazioni tra ecclesiasticità e non ecclesiasticità dei beni," in W. Aymans-K.T. Geringer-H. Schmitz (Eds.), *Das konsoziative Element in der Kirche. Akten des VI. internationalen Kongresses für kanonisches Recht, München, 14.–19. September 1987* (St. Ottilien 1989), pp. 583–594; idem, Art. "Proprietà (dir. can.)," in *Enciclopedia del diritto*, vol. 37 (Milan 1988), pp. 322–324; F.R. Aznar Gil, "Los bienes temporales de las asociaciones de fieles en el ordenamiento canónico," in *Asociaciones canónicas de fieles. Simposio celebrado en Salamanca*

Therefore, this authority will fulfill the duties assigned to it in book V of the *CIC*, provided they are compatible with the statutes and with the nature of the association. The association will then administer the goods in accordance with the provisions of its statutes. Therefore, the duties of the authority and those of the directive organs of the association are different. The ecclesiastical authority does not administer the goods, it only supervises the administration of them.[2] The higher direction in the area of patrimony, as indicated by the CBI, "consiste nel controllo (o 'tutela') dell'amministrazione dei beni appartenenti alle singole associazioni."[3] The specific means for exercising this supervision is the yearly account, which must be submitted to the authority that established the association. In the law of the CBP, in norms that are especially mindful of matters of patrimony (it discusses them in articles 71–104), there is a special characteristic with regard to the yearly account: the supervisory organ of the association (if there is one) will review the association balance sheet before it is sent to the authority. It must certify that it is true, using the following formula for this purpose: "Declaro que, quanto me foi possível averiguar, estas contas são a expressão da verdade."[4]

The statutes of public associations must reflect that the goods constituting the association patrimony are ecclesiastical. Therefore, as provided for by the CBS, "they must incorporate among their norms the provisions of common law on the administration of ecclesiastical goods (cf. c. 319 § 1), with regard to ordinary administration as well as with regard to acts of extraordinary administration."[5] This reception of codal norms into the statutes is particularly necessary in cases in which the law of the state does not acknowledge the application of codal norms to the goods of public associations.[6]

ordenamiento canónico," in *Asociaciones canónicas de fieles. Simposio celebrado en Salamanca* (Salamanca 1987), pp. 143–213; idem, *La administración de los bienes temporales de la Iglesia* (Salamanca 1984), pp. 31–34; V. De Paolis, "Schema canonum libri V 'De iure patrimoniale Ecclesiae,'" in *Periodica* 68 (1979), pp. 681–713; and C Presas Barrosa, "La matización de la personalidad jurídica como tipificadora del bien patrimonial desde el nuevo Código de Derecho canónico," in W. Aymans-K.T. Geringer-H. Schmitz (Eds.), *Das konsoziative Element...*, cit., pp. 557–561.

2. Cf. Signatura, "Sentencia del 29 de septiembre de 1989," in *Revista Española de Derecho canónico* 48 (1991), pp. 315 and 317.

3. CBI, "Istruzione in materia amministrativa," April 1, 1992, no.115, in *Notiziaario della CEI* 1992.

4. CBP, *Normas gerais para regulamentação das associações de fiéis*, March 15, 1988 (Fátima 1988), art. 103 § 4, 2°.

5. CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional*, April 24, 1986, no. 18, in *BOCEE* 10 (1986). For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

6. Cf. CBI, "Istruzione in materia amministrativa," cit., no. 115.

ner provided for in the statutes and in local customs,[7] based on the norms on the general regulation of donations and pious bequests (cf. cc. 1299–1301). The only difference is that, as is inferred from the exact wording of c. 319 § 2, the authority to which it must give an accounting is the one that established the association and not the local Ordinary.

Other competencies of the ecclesiastical authority regarding public associations , specifically, of the diocesan bishop, are the following: he has the right to impose, in order to subsidize the needs of the diocese, a moderate tax on public associations subject to his jurisdiction (c. 1263), and the seminary tax, on those associations having their headquarters in the diocese (c. 264).

7. Cf. R. PAGÉ, "Associations of the faithful in the Church," in *The Jurist* 47 (1987), p. 190.

320 **§ 1. Consociationes a Sancta Sede erectae nonnisi ab eadem supprimi possunt.**

§ 2. Ob graves causas ab Episcoporum conferentia supprimi possunt consociationes ab eadem erectae; ab Episcopo dioecesano consociationes a se erectae, et etiam consociationes ex apostolico indulto a sodalibus institutorum religiosorum de consensu Episcopi dioecesani erectae.

§ 3. Consociatio publica ab auctoritate competenti ne supprimatur, nisi auditis eius moderatore aliisque officialibus maioribus.

§ 1. Associations established by the Holy See can be suppressed only by the Holy See.

§ 2. For grave reasons, associations established by the Bishops' Conference can be suppressed by it. The diocesan bishop can suppress those he has established, and also those which, by apostolic indult, members of religious institutes have established with the consent of the diocesan bishop.

§ 3. A public association of the faithful is not to be suppressed by the competent authority unless the moderator and other senior officials have been consulted.

SOURCES: §1: c. 699 §2
§2: c. 699 §1

CROSS REFERENCES: cc. 120 §1, 123, 326

COMMENTARY

Luis Felipe Navarro

1. This norm contemplates the most drastic measure that the authority can take with regard to a public association: the suppression of it.[1] The basis of this provision is found in the need to safeguard the unity and communion of the Church. As this is a supreme value of ecclesial life, the ecclesiastical authority has the right and the duty to ensure that there be

1. CF. S. BUENO SALINAS, *La nocion de persona juridica en el Derecho canonico* (Barcelona 1985), p. 243ff.

nothing in its sphere of jurisdiction that may be opposed to faith, morals, and ecclesiastical discipline.

2. However, not every ecclesiastical authority that is competent to supervise a public association is competent to suppress it. To each type of association there corresponds a distinct authority. Associations erected by the Holy See can only be suppressed by the Holy See; national associations can be suppressed by the Bishops' conference that established them (the particular law will determine which organ of the Bishops' conference is competent to make the decision: in Spain, it is the Plenary Assembly);[2] and diocesan associations, by the diocesan bishop. It is also the duty of diocesan bishops to suppress associations that have been erected with their consent, by apostolic indult, or by members of religious institutes (cf. 320 § 2). With the exception of this case, the ordinaries of places where associations that were not established by them are functioning only have, by virtue of the supervision which is their competence, the right and duty to report to the respective competent authorities the conduct of any association deserving of suppression. They also can and should express their opinion with regard to the suppression.

3. Because suppression is such a serious measure, the ecclesiastical authority must use all means at its disposal in order to avoid having to resort to this extreme measure. Thus, in order to bring the association back within the limits of ecclesiastical behavior, it might make use of a commissioner to govern the association for a period of time, admonish the leaders, or remove the president, and so forth. (cf. c. 318). A manifestation of this reorientation would be a public retraction of the conduct that demonstrated a departure from the ecclesial communion.

4. Although the rule of § 1 may lead one to believe that a grave reason is not required to suppress associations created by the Holy See, as with the associations indicated in § 2, it is, in fact, required. Among the reasons that may give rise to said suppression are the reasons set forth for suppression of a private association, since it is more harmful when an association acting *nomine Ecclesiae* "causes grave harm to ecclesiastical teaching or discipline, or is a scandal to the faithful" (c. 326).

5. Should an association fall into one of these cases and the efforts made to return the association to ecclesial communion do not produce the desired effects, the authority may open an administrative proceeding,[3] in which the truth and the extent of those acts showing grave harm to ecclesiastical teaching or discipline, or causing scandal among the faithful are proven. In order to prove these grave cases, the public conduct of the as-

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2. Cf. CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional*, April 24, 1986, no. 20, in *BOCEE* 10 (1986). For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

3. Cf. Signatura, *Decreto definitivo*, April 20, 1991, no. 14, in *Studia canonica* 25 (1991), p. 413.

sociation must be taken into account (especially statements, documents, communiqués, notorious facts for which there are witnesses who can testify, etc.). Obviously, at this stage, the leaders of the association must be heard (c. 320 § 3). Once the procedure is completed, the authority shall issue the decree of suppression. In the first part, after indicating the measures taken to avoid suppressing the association (warnings, notes), it shall set forth the reasons that led to the suppression (grave errors against doctrine in association publications, in its celebrations, etc., and the absence of due retraction). In the second part of the decree it shall be noted that the leaders of the association were heard, and suppression of the association shall be decreed, possibly including the allocation of the patrimony. The association can submit a hierarchical (cf. cc. 1732–1739) and judicial (cf. c. 1445 § 2) recourse against this decree and can request that the execution of the decree be suspended.[4]

6. After a financial study of the suppressed association has been conducted, the goods will be liquidated. For this purpose, in the first place, the norms of the statutes will be followed. Normally these norms provide to whom the patrimony of the suppressed association will be transferred (or they at least indicate who will designate the recipient entity), and they include a clause stating that the assets must be earmarked for the same purposes as before. If the statutes are silent on this matter, the goods, ownership rights, and association liabilities shall pass to the immediately superior juridical person. Nonetheless, the will of the donors and founders (cf. cc. 123, 1303 § 2ff) and the acquired rights, "sopratutto degli appartenenti all'associazione soppressa,"[5] must always be respected.

7. In view of the basis and the meaning of suppression, it is understood that the authority must not be afraid of taking this measure with respect to an association that in fact has separated itself from the Church and no longer fulfills its ecclesial function. Therefore, it must not allow its decision to be influenced by how it will be received by association members. Moreover, even if the authority is certain that these members will continue acting outside of the ecclesiastical communion once the association is suppressed, future disobedience does not justify that the association continue existing and harming, *nomine Ecclesiae*, the community of the faithful. Suppression is an unavoidable duty of ecclesiastical authority, since the faithful have the correlative right not to suffer the disorientation and harm that may be caused by an association that, while formally a public association acts, in fact, outside of the Church.

4. Cf. R. PAGÉ, "La Signature apostolique et la suppression du statut canonique de l'Armée de Marie," in *Studia canonica* 25 (1991), p. 406.

5. CBI, "Istruzione in materia amministrativa," April 1, 1992, no. 116, in *Notiziario della CEI* 1992.

CAPUT III
De christifidelium consociationibus privatis

CHAPTER III
Private Associations of Christ's Faithful

321 **Consociationes privatas christifideles secundum statutorum praescripta dirigunt et moderantur.**

Christ's faithful direct and moderate private associations according to the provisions of the statutes.

SOURCES: SCCouncil Resol., 13 nov. 1920 (*AAS* 13 [1921] 135–144)

CROSS REFERENCES: cc. 94, 95, 215, 298–300, 304

COMMENTARY

José A. Fuentes

1. *Nature and constitution of private associations of the faithful*

This chapter regulates some associations that were not contemplated in the previous codification, which is why it is necessary to explain the nature of what are called private associations. These are associations founded and governed on the private initiative of the faithful. It is the faithful who begin them and write their statutes, and it is also the faithful who are responsible for all of the associations' actions, because at no time do these private entities act in the name of the Church (c. 116 §1).

In this first canon on private associations of the faithful it is indicated that those who lead and govern them are the faithful, instead of beginning by indicating that it is the faithful themselves who found the

associations.[1] The absence of an express provision in this regard is remedied by the general recognition of the right of association in c. 215. It is also justified because the general capacity to found associations is declared in c. 299 § 1, not only with regard to private associations, but also with regard to any type of association. It is the faithful who found any type of association,[2] even though in the case of public associations, they are defined as such because there exists an act proper to the authority: erection. In private associations, however, such as they were contemplated during the drafting of the code, because no act proper to the authority is required, it is fully demonstrated that the right of association *est quidem ius naturale nullum requirens actum ex parte auctoritatis*.[3]

"Private associations make explicit the free initiative of the faithful to associate in the Church, heighten their responsibility, and testify to the trust that the hierarchy has in their contribution to the building up of the Church."[4] These associations must submit their statutes to the authority for review (c. 299 § 3), and need to obtain approval of the statutes (c. 322, §2) if they want to obtain juridical personality.

In order to properly understand the meaning of these canons, before proceeding to their exegesis, we must consider what Vatican Council II taught with regard to the regulation of associations. The provisions of the Code on private associations constitute a *totally new normative system* based on the recognition by the council that the faithful have the right to associate.

2. *Impact of Vatican Council II on the juridical governance over associations*

Regulations on associations, and in particular, the recognition of private associations, is one of the normative innovations that best expresses the importance of the responsibility of the baptized and the joint responsibility of the faithful, as those characteristics were proclaimed in the Council. "Any person who believes and wants to be in the Church can do no

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1. J.A., MARQUES, "O direito de associaçao e as associaçoes de fiéis na Igreja a luz do Vaticano II e do Novo Código de Direito Canónico," in *Theologica* 19 (1986), p. 550.
2. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia,* 3rd ed. (Pamplona 1991), pp. 129–130.
3. *Comm.* 15 (1983), pp. 82–83.
4. CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional,* April 24, 1986, no. 34, in *BOCEE* 3 (1986), p. 83. Cf. L. MARTÍNEZ SISTACH, *Las asociaciones de fieles* (Barcelona 1994), pp. 95–96. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

less than be convinced of the 'original, irreplaceable, and non-transferable duty' that each of the faithful 'must carry out for the good of everyone.'"[5]

The right of the faithful to found and direct associations is connected to the primitive Church. Since the beginning, Christians have shown a desire to associate, but not always (and especially during the first centuries) did that desire manage to take shape in stable entities with organizations that transcended the individuals.[6] Once the difficulties of the first centuries were overcome, the associative reality was manifested in numerous forms. The common desire of the faithful to associate and its manifold variety suffered a setback when, during the late nineteenth century and early twentieth centuries, dependence on the authority reached such an excessive level that, (as seen in the norms of the Code of 1917), associations were only seen as existing in dependence on the hierarchy, as if they were a phenomenon of the organization of the Church and governed by it.[7]

Vatican Council II, recognizing the right of the faithful to associate in order to fulfill the ends proper to the baptized (*AA* 19), shows that the legal relationships in associations depend primarily on the faithful and also on the entities that they found, because these already have a legal dimension that must be valued and protected. That is why it must be affirmed that the rights and obligations of associations, especially private associations, are primarily found in the associative reality itself, and only secondarily in the norms formalized by the authority.

3. *Norms on private associations*

CIC/1917 only recognized associations that had a direct dependence on the Hierarchy, that is, public associations. However, because technical labels cannot prevent the flow of life in that which is a fundamental aspect of the constitutional nature of the faithful, there were still associative phenomena that did not fit into that system. It was necessary to acknowledge that there were associations that were not configured according to the classification of the canons. Thus, associations that, being outside of the

5. JOHN PAUL II, General Audience, March 23, 1994, no. 1, in *Palabra* (*Documentos Palabra*) III (1994), no. 36, (English edition: "Lay Groups Promote Church's Mission," in *L'Osservatore Romano*, Weekly Edition, March 30, 1994, p. 11); and Ap. Exhort. *CL passim.*

6. Regarding associations in the early Church, cf. A. GARCÍA GARCÍA, "Asociaciones en la historia de la Iglesia y en el ordenamiento canónico," in *Asociaciones canónicas de fieles* (Salamanca 1987), pp. 22–41; ID., "Significación del elemento asociativo en la historia del derecho de la Iglesia," in W. AYMANS-K. T. GERINGER-H. SCHMITZ (eds.), *Das konsoziative Element in der Kirche. Akten des VI. Internationalen Kongresses für kanonisches Recht, (München, September 14–19, 1987* (St. Ottilien 1989), pp. 25–47.

7. Cf. A. DEL PORTILLO, "Ius associationis et associationes fideles iuxta C. Vaticani II doctrinam," in *Ius Canonicum* 8 (1969), p. 6.

system, did not depend on the authority, but rather on the will of their constituents, came to be called "lay associations." This was the case of the Conferences of St. Vincent de Paul, which were recognized as such "lay associations" in a resolution of the Holy See.[8] Moreover, at another moment it was necessary to acknowledge that, together with *de jure* associations, configured in accordance with the authority's regulations, there were other *de facto* associations.[9]

These adjustments created the need to reconsider the associative reality. This recognition, along with the proclamation of the fundamental right of association, took place at Vatican Council II. From that moment on, and then later in the *CIC*, some broader descriptions were taken up by the legislator in such a way that life, the reality of associating, achieved better recognition as a rich good of the Church.

Very early during the drafting of the Code it was accepted that the associative phenomenon, which went beyond positive law, could not be included under the expression "lay associations,"[10] "because it did not make sense to contrast the term 'lay' with the term 'ecclesiastical', since the clergy could belong to that type of association."

However, the new classifications appearing in the Code, with the distinction between public and private associations, are not only a result of the difficulties of the *CIC*/1917, but also a technical expression of the Council's thinking. The so-called "lay associations" of the former system do not correspond to lay associations, nor did they exactly correspond to private associations of the present system. "The canonical legislator has totally dropped the typology of the associate law of the Code of 1917, and it is in no way true that by the distinction between public and private associations, is understood the same reality of ecclesiastical and lay associations foreseen in the former Code."[11] In the norms prior to 1983, "lay associations" were understood in the sense of extra-ecclesial associations—*non habet esse ab Ecclesia, nec ab Ecclesia agnoscitur quoad iuris effectus*[12]—which could be praised or recommended by the authority.[13] The Council opened some truly new prospects, in such a way that any similarities between the present and former distinctions are more apparent than real, because explicit recognition of the right of association as an ecclesial right has changed even the very terms of the problem.[14] Tak-

8. SCCouncil, Resol. *Corrientensis*, September 13, 1920, in *AAS* 13 (1921), pp. 135–144.
9. *CSan*, no. 5.
10. *Comm.* 18 (1986), p. 214.
11. W. SCHULZ, "La posizione giuridica delle associazioni e la loro funzione nella Chiesa," in *Apollinaris* 59 (1986), p. 130.
12. SCCouncil, Resol. *Corrientensis*, cit., pp. 136–139.
13. Cf. J.M. GONZÁLEZ DEL VALLE, "Los bienes de las asociaciones canónicas privadas con personalidad jurídica," in *Das konsoziative Element in der Kirche...*, cit., p. 568.
14. Cf. G. FELICIANI, "Il diritto di associazione e la possibilità della sua realizzazione nell'ordinamento canónico," in *Das konsoziative Element in der Kirche...*, cit., p. 400.

ing this into account, other terminology was sought to overcome the previous difficulties, which resulted in the distinction between public and private associations.

The fundamental criterion for interpreting the norms on private associations is the fact that it is a concrete normative development of a fundamental right, the right of association (c. 215), intimately related to the right to promote and carry out apostolic action (c. 216), and which depends on the conditions of communion and freedom in which the life of the faithful should be manifested.[15]

Together with the recognition of this fundamental right, characterizing the present norms, especially in the canons referring to private associations are the tendency to accentuate their autonomy (provided that the ends pursued by the associations allow it) and the principle of subsidiarity in such a way that norms are reduced to a minimum, leaving the rest to what the faithful freely determine in the statutes of the association.[16]

4. *Technical form of private associations*

The present normative system categorizes associations as public or private, depending on the relationship they have with the authority. Although the terms "private" and "public" originate from civil law doctrine, they cannot be rejected merely because of their origin. It is sufficient to use them appropriately in the canonical system, and indicate which aspects of the general difference which exists between public and private, according to use of those terms until now by civil legal scholars, which cannot be applied to canon law. The dialectic of confrontation between public and private, which has been considered by one commentator as preventing this technical distinction from having full validity and efficacy in the Church,[17] must not be considered an insurmountable difficulty. It does not occur, or at least it should not occur in any legal system, either in the civil or, of course, in the canonical system. When this opposition appears in a State, it is because there is an attempt to eliminate one of the two dimensions of juridical life. Totalitarian regimes support this opposition and seek to eliminate what is private.

There can be no opposition between what is private and what is public. There is, however, a distinction. Only those having a positivist vision

15. Regarding the constitutional condition of the fundamental rights of the faithful, cf. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987).

16. Cf. J. MANZANARES, "Las asociaciones canónicas de fieles. Su regulación jurídica," in *Asociaciones canónicas de fieles*, cit., p. 113.

17. Cf. P.A. BONNET, "'Privato' e 'pubblico' nell'identità delle associazioni dei fedeli disciplinate dal Diritto ecclesiale," in *Das konsoziative Element in der Kirche...*, cit., pp. 526–546.

of law, or those who maintain that there should only be "social" action in the Church, which they naturally find appropriate, can seek to minimize the efficacy of the will of the legislator manifested in these canons, in which real spheres of juridical autonomy are recognized.

Provided that it is not understood as being in opposition to public responsibility, private autonomy has particular important in many aspects of Church life, among which is associative life. This can come to be considered as a general principle of canon law.[18]

There can exist no real caution against this terminology, because all the authors agree at least in recognizing that "we are not applying to our case the correlative categories of civil law when we talk about public and private, as if private associations only satisfied private interests and public associations the interests of the community. It is a matter of an already problematic distinction in the field of civil law, which in canon law must be limited, since, to a certain extent, we are beyond the categories of public law and private law because here everything is public, to the extent that everything is rooted in the *societas christiana*, and consequently everything is ruled by the *utilitas Ecclesiae*."[19]

The terms 'public' and 'private' are therefore suitable, because, although what is public is of interest to everyone, in a strict sense, it must be affirmed that in the Church not everything is public.

Another difficulty that may arise is differentiating between the public and the private in the Church, drawing a parallel with the communitarian and the personal dimensions, as if public associations corresponded to the former and private associations to the latter. The condition of communion of the faithful must affect all their actions; not only social and institutional, but also personal. Associations themselves are a sign of communion (cf. *AA* 18). To imagine that the condition of communion is only manifested in public associations is not only a mistake, but also leads to a rejection of private associations and, indirectly also to a rejection of any initiative on the part of the faithful that is not directly dependent upon the hierarchical authority . Such interpretation is against what was taught by Vatican II on apostolic missions of the faithful as such and of the hierarchy[20] (Cf. LF 27, 37; *CD* 17; *AA* 18).

One of the limitations of the term "private" with regard to associations is that the legislator uses it as a *technical framework* that includes a varied group of associations. This assumes that the norms, in a most adequate way, differentiate between the right of association, the founding of specific associations on the part of the faithful, and the different types of recognition that the authority can give to associations. Therefore, there

18. Cf. E. MOLANO, *La autonomía privada en el ordenamiento canónico* (Pamplona 1974).
19. Cf. J. MANZANARES, "Las asociaciones canónicas...," cit., p. 115.
20. Cf. *LG* 24, 27, 33, 37; *CD* 16, 17; *AA* 16, 18, 19.

are associations outside the technical framework established by the Code. This is not particularly unusual: just as the commentators on the *CIC*/1917 admitted the existence of associations that were not configured according to the categories of the canons, today we must also admit the same.[21]

Associations, once they have been established by the faithful, may be recognized by the authority. This recognition may be explicit, in accordance with the provisions of c. 299 § 3, but it may also be implicit, for example, when the authority maintains a specific and concrete relationship with an association that has not yet gone through the *recognitio* procedure. In order to obtain explicit recognition by the ecclesiastical authority, it must submit its statutes for review.[22]

5. *Canonical classification of associations prior to the CIC 1983*

Once the difference between public and private associations was determined in the Code of 1983, one might wonder about the proper place for those associations established prior to 1983. Is a new classification perhaps needed for each one of those associations? The Spanish Bishops' conference in its norms has taken this matter into account and, with very suitable criteria, does not give a generic solution. It respects the nature of the various associative phenomena and recommends study of each association. This would include those associations that at the time had been expressly erected and had juridical personality, that, according to the previous law, had to be public, because this was the only type that was recognized. These particular norms expressly state that "the new Code, in distinguishing between public and private associations, offers juridical solutions that are more in keeping with reality. It would be advisable to revise the preceding statutes and adapt them to the current law, placing them in the juridical framework that is most in keeping with their nature."[23]

For associations established prior to the Code, what is shown in these regulations from the Conference of Bishops of Spain is fundamental: a respect for their proper nature and reality. General solutions cannot be given, assuming that everything prior to 1983 would have to be public because private personality did not exist. This positivist exegesis of the current set of norms does not take into account the associative reality and

21. Cf. A. ALONSO LOBO, in A. ALONSO LOBO-L. MIGUÉLEZ-S. ALONSO MORÁN, *Commentarys al Código de Derecho Canónico* (Madrid 1963), t. 2, pp. 13–15.

22. Regarding the existence of the association and the technical framework one obtains through the revision of the statutes, cf. G. FELICIANI, "Il diritto di associazione...," cit., pp. 406–412; L.F. NAVARRO, *Diritto di associazione e associazioni di fedeli* (Milan 1991), pp. 70–84; L. CHIAPPETTA, *Il Codice di Diritto Canónico. Commento giuridico-pastorale*, t. 2 (Naples 1988), commentary on c. 321, p. 402.

23. CBS, *Instrucción sobre asociaciones canónicas...*, cit., no. 36, p. 84.

the difficulties caused by the *CIC*/1917, which were recognized by the authority itself.[24] The development of these associations, from 1983 on, will continue to depend upon the statutes and, perhaps frequently, upon custom itself, provided that this set of norms is not in conflict with the canons. In some cases, it may be necessary to revise the statutes,[25] and it may be appropriate to consider a technical adaptation to current expressions and classifications, but without forgetting that before 1983 there existed associations that went beyond what were determined to be public associations, as norms and doctrine recognized when speaking about so-called "lay associations."

6. *Placement of the canons regarding private associations within the canonical system*

One author has argued that if the fundamental core of what associations are depends upon the constitutional condition of the faithful, the Code should first regulate private associations. It would then later consider those associations, the public associations, that take on a particular relationship to the hierarchy, that is, those that add something more to the constitutional condition of the faithful.[26] The system found in the code, by placing public associations first, might lead one to believe that the paradigm of associations is the public association, when in reality the fundamental reality of these associations, inasmuch as associations, is what they have in common with other associations: the will of the faithful to associate.

In any event, the systematic placement is secondary, especially because the common as well as the specific characteristics of associations are clearly reflected in the substantive provisions of each one of the canons.

A technical inaccuracy is the placement of canon 310, which is found in chapter I on norms common to all associations of the faithful, but inasmuch as it refers only to private associations, it should not be in one location. Its proper place would be in this chapter III, after c. 322 or c. 325 (for the provisions in c. 310, on the capacity for patrimonial and procedural acts, see the commentary on that canon; see also c. 325 § 1 and its commentary).

24. SCCouncil, Resol. *Corrientensis*, cit.

25. It is not therefore necessary that a reassessment "de oficio" be carried out, as was proposed shortly after the Code appeared: cf. S. BUENO SALINAS, "Personalidad jurídica de las asociaciones: naturaleza, constitución y aprobación o erección," in *Asociaciones canónicas de fieles*, cit., pp. 109–110.

26. Cf. L.F. NAVARRO, *Diritto di associazione e associazioni...*, cit., *passim*.

7. *Statutes*

Canon 321 shows that the statutes of an association are constituted as its proper law, as the norms regulating the life of the association. It is the association itself—or, if you will, the faithful themselves—who give themselves the statutes. These proper norms cannot be set apart from general norms or from the functions that belong to the hierarchy. Nor can it be said that the statutes of an association are unrelated to the rest of the faithful, because, although the statutes are only binding on persons who are legitimate members (cf. c. 94 § 2), the universe of juridical relationships, at least with regard to the possibility that other faithful might belong to the association, as well as the potential relationships of any of the faithful with the association, concerns everyone in the Church. It is precisely that general interest, the larger scope of the statutes, which renders them subject to monitoring by the authority.[27]

Universal norms require that statutes regulate the following matters (cf. especially cc. 94 and 304): name or title of the association (c. 304 § 2); end or social objective (cc. 94 § 1, 298 § 1 and 299 § 1); organs of government and headquarters (cc. 304 § 1 and 324); constitution, governance, and type of activity (cc.94 § 1, 309, and 322); authority upon which it depends (cc. 305, 312, 322 §1, and 323); rules for admitting members (cc. 304 § 1, 307) and for their possible expulsion (c. 308); rights, obligations, privileges, and indulgences concerning the members (c. 306); dissolution and extinction of the association (c. 326 § 1), extending to allocation of assets (cc. 123 and 326 § 2); geographical scope—one or more dioceses, international, etc.—(cc. 304 § 1; 305 § 2, and 312); governance and administration of the patrimony (cc. 325 and 1257).

8. *Governance of private associations*

The first normative expression in this canon on private associations, "the faithful direct and govern private associations," synthesizes the contrast between these associations, the characteristic of which is autonomy, and the specific hierarchical control exercised by the authority over public associations.[28] In indicating that these associations have their own proper governance, the meaning of the canon depends on the fundamental right of association and on the condition that each association maintain the necessary relationship with the ecclesiastical authority (*AA* 19). Legal determinations regarding these associations will always be few, because they are governed by their own statutes. In fact, in the present system of

27. Ibid., pp. 54–56.
28. Cf. E. KNEAL, commentary on c. 321, in J.A. CORIDEN-T.J. GREEN-D.E. HEINSTCHELL (eds.), *The Code of Canon Law. A Text and Commentary* (New York 1985), p. 254.

regulations these associations depend on what is determined in the canons following c. 321, as well as on what is indicated in the canons on the common norms for associations of the faithful.

The rules governing these associations are fundamentally different from public associations. It is not merely a question of quantity, as if some associations had to depend upon more general norms and others upon less. The different set of rules is a result of the fact that in private associations, the right of association is manifested in a more basic and fundamental way, more directly manifesting the freedom of the faithful. Public associations, however, being particularly connected to the hierarchical office, lack what is more characteristic of the private association of the faithful: their autonomous activity and particular commitment and responsibility.

The *recognitio* of a private association as provided in c. 299 § 3 does not entail a particular dependence upon the authority. During the time of the revision of the code, the proposal to require no prior intervention by the ecclesiastical authority was reversed, but this new requirement did not change the nature of the associations. "Ius enim associationis est quidem ius naturale nullum requirens actum ex parte auctoritatis. Ut autem agnitio alicuius associationis in iure haberi possit, requiritur ut eius exsistentia aliquo modo constet: ita ex. gr. ius civile exigit saltem inscriptionem associationis in albo. Ideo associationes in Ecclesia debent quoque participem reddere auctoritatem de earum existentia. Immo, eiusdem auctoritatis ecclesiasticae est quoddam testimonium emittere de christiana authenticitate talis associationis, necnon eius finium et mediorum, ita ut nihil in ipsis adversetur doctrinae, disciplinae vel integritati morum."[29]

9. *Ends and other characteristics of private associations*

In the post-synodal apostolic exhortation of John Paul II on the vocation and mission of the lay faithful, *Christifideles Laici,* many aspects of associations were considered. Among others, the existence of diverse forms was recognized. In particular, this term 'aggregate', is used to demonstrate that groups, movements, communities, or associations in the narrow sense, may arrive at very different configurations.[30]

Together with a diversity of forms, there is much variety with regard to the ends that associations can pursue. Any end proper to the condition of the baptized may be pursued by the faithful united together in association. It is characteristic of private associations that the ends they

29. *Comm.* 15 (1983), pp. 82–83.

30. Cf. *CL* 1; JOHN PAUL II, *Allocution* March 23, 1994, no. 4, in *Palabra* (*Documentos Palabra*) III (1994), no. 36 (English edition: "Lay Groups Promote Church's Mission," in *L'Osservatore Romano*, Weekly Edition, March 30, 1994, p. 11).

strive for are not pursued in the name of the Church. This does not mean that the mission of these associations is any less ecclesial, or that these associations are those in which the faithful are united in pursuit of civil, social, political, or cultural ends. Private associations of the faithful are associations in the Church and they exist to carry out ecclesial ends, as indicated in c. 298 § 1 (cf. *CD* 17 and *AA* 19).[31]

Another problem that is not properly a canonical problem is that of civil associations insofar as they undertake objectives that more or less directly affect the Church.[32] These civil associations (for example, associations promoting human rights or fundamental liberties) find their proper framework of activity in civil law systems, and the faithful who come together in these associations, without being under the control of ecclesiastical authority (neither under guardianship nor hierarchical control), will try to be very mindful of the general indications of the hierarchy for the evangelical transformation of society.

Therefore, the ends are limited, by the fact that they should involve true ecclesial ends. When a group of the faithful seeks a technical, political, or purely social solution in a given secular sphere, it is clear that that association of citizens cannot be conceived of nor founded as an association of the faithful, but rather as an association of citizens whose proper regulations belong to civil law. There is, however, a limitation expressly established in the Code, in c. 301, that private associations be excluded from some concrete ecclesial ends that are reserved for the public function and for public associations of the Church. This determination is simply a matter of preventing private associations from acting in the name of the Church or attempting to carry out functions belonging to the instruments of official action. This is the situation of associations attempting to teach doctrine "in the name of the Church," or of associations whose end is to "promote public worship" (cf. c. 834 § 2). With respect to this issue, at times, it is not easy to determine if it is sought to promote worship that is in fact public. For this reason, even though it is usually thought that confraternities, insofar as they promote worship, must be public associations,[33] there are some who believe that duly considering the end that is undertaken and the will of their members, from among these confraternities private associations may also be recognized.[34]

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31. Cf. M.J. VILLA ROBLEDO, "Caracterización de las asociaciones por razón de sus fines," in *Das konsoziative Element in der Kirche...*, cit., pp. 499–506.

32. Cf. J.H. PROVOST, "The realization of ecclesiastical purposes trough and in associations of secular law," in *Das konsoziative Element in der Kirche...*, cit., pp. 752–769.

33. Cf. J.A. MARQUES, "Las cofradías en el CIC de 1917 y en el CIC de 1983," in *Das konsoziative Element in der Kirche...*, cit., pp. 603–619.

34. Cf. J.A. FERNÁNDEZ ARRUTY, "Naturaleza jurídica de las cofradías en el nuevo Código de Derecho Canónico," in *Das konsoziative Element in der Kirche...*, cit., pp. 595–597.

As regards the question of who may be accepted into private associations of the faithful, it depends upon the general rule established in c. 307, which refers one to the provisions of the statutes. During the drafting of the current c. 307, various possibilities were considered with regard to the admission of separated brethren in Catholic associations, but no change is being proposed on this issue.[35]

35. *Comm.* 12 (1980), pp. 100–101; 15 (1983), pp. 84–85; 18 (1986) 289–290. The same happened in the Eastern codification, cf. *Nuntia* 5 (1977), p. 46; 13 (1981), p. 91.

322 **§ 1. Consociatio christifidelium privata personalitatem iuridicam acquirere potest per decretum formale auctoritatis ecclesiasticae competentis, de qua in can. 312.**

§ 2. Nulla christifidelium consociatio privata personalitatem iuridicam acquirere potest, nisieius statuta ab auctoritate ecclesiastica, de qua in can. 312, §1, sint probata; statutorum vero probatio consociationis naturam privatam non immutat.

§ 1. A private association of Christ's faithful can acquire juridical personality by a formal decree of the competent ecclesiastical authorit mentioned in can. 312.

§ 2. No private association of Christ's faithful can acquire juridical personality unless its statutes are approved by the ecclesiastical authority mentioned in can. 312 §1. The approval of the statutes does not, however, change the private nature of the association.

SOURCES: §1: c. 100 §1

CROSS REFERENCES: cc. 94, 113–123 (especially c. 114 §§1 and 3, 116 §2, 117), 215, 299 §3, 312 and 313

COMMENTARY

José A. Fuentes

1. *Juridical personality of private associations; private associations with personality and private associations without personality*

Juridical personality attempts to solve the problem of the juridical subjectivity of entities in the canonical system.[1] It is important to keep

1. Cf. P. LOMBARDÍA, "Persona jurídica en sentido lato y en sentido estricto (Contribución a la teoría de la persona moral en el ordenamiento de la Iglesia)," in *Escritos de Derecho Canónico* (Pamplona 1975), pp. 135–166; idem, "Personas jurídicas públicas y privadas," in *Escritos de Derecho Canónico y Derecho Eclesiástico del Estado*, t. 4 (Pamplona 1991), pp. 439–446; S. BUENO SALINAS, "Personalidad jurídica de las asociaciones: naturaleza, constitución y aprobación o erección," in *Asociaciones canónicas de fieles* (Salamanca 1987), pp. 97–111; R. NAVARRO VALLS, "Las asociaciones sin personalidad en Derecho Canónico," in W. AYMANS-K.T. GERINGER-H. SCHMITZ (eds.), *Das konsoziative Element in der Kirche. Akten des VI. Internationalen Kongresses für kanonisches Recht, München, September 14–19, 1987* (St. Ottilien 1989), pp. 546–556; M. CONDORELLI, *Destinazione di patrimoni e soggetività giuridica nel Diritto canónico. Contributo allo studio degli enti non personificati* (Milan 1964).

this origin in mind, as well as this realistic sense of what personality is, because otherwise it could come to be considered a mere concession by the authority, which would be an error of juridic positivism and voluntarism, depriving this technical term of its effectiveness.

The first fundamental point in the exegesis of this canon, and of the other canons that depend upon what is determined in this norm, is to define how the code uses the technical term 'personality' in relation to entities that depend upon private initiative. These entities enjoy varied importance in the Canonical system. In the Church, there will be some associations that have not sought a review of their statutes and others (which can then be considered private associations in the strict sense) that have submitted their statutes for review, as contemplated in c. 299 § 3 and lastly, some that may be moreover included in the technical category of a private juridical person.[2]

The canon indicates that associations may or may not have juridical personality. The Code, in other provisions, takes into account that the absence of personality, including its denial, does not imply the non-existence of the subject; to state otherwise would be to deny reality.[3] Therefore the legislator, with a realistic view of what associations are, does not attempt to reject associations without juridic personality. He seeks a solution for the subjectivity of associations in those cases in which it is necessary. At the same time it is clear that associations, through their personality, are constituted as subjects in which an abundance of rights and obligations is recognized (cf. c. 113 § 2). Thus personality is understood as a special *kind of subjectivity.*

The other fundamental point of the exegesis of the norms on juridical personality of associations is that the technical figure of 'personality' is at the service of what associations are in themselves, and not the other way around. Thus we can understand the function of the authority when recognizing, or not recognizing, juridical personality. It is not a question of an act of mere generosity.

Regarding the method for acquiring personality, c. 116 § 2 distinguishes between acquiring personality through the law itself or as a concession from the authority. Nonetheless, for private entities, it provides that they acquire personality "only by a special decree of the competent authority." For these private entities to achieve personality, therefore, it is not enough merely to exist. Not even *recognition* from the authority, as provided in c. 299 § 3, would be sufficient for obtaining it. In paragraph one of canon 322, according to the provisions of c. 116 § 2, in order to acquire personality, a specific act by the authority is required, a "formal de-

2. Cf. V. PRIETO MARTÍNEZ, "Iniciativa privada y personalidad jurídica: las personas jurídicas privadas," in *Ius Canonicum* 25 (1985), pp. 565–566.
3. Cf. L. F. NAVARRO, *Diritto di associazione e associazioni di fedeli* (Milan 1991), pp. 85–87.

cree from the competent ecclesiastical authority."[4] This formal decree is conditional upon a prior requirement: *approbation* of the statutes.

Although automatic concession of juridical personality could have been a good method for regulating the right to associate, the canonical legislator has preferred a more cautious method. It is not even admitted that the authority has to automatically grant personality, nor that it may be obtained *ipso iure*. In fact, in an early draft of the provision that would later become c. 116 § 2, private juridical personality was admitted *ipso iure*, but later all Commission members preparing the legislative text agreed to eliminate that possibility.[5] Therefore, dependence on the authority is established in each case, which mandates prior control. At the same time, in order to leave no entity unprotected, they do not fail to recognize a degree of subjectivity in associations that do not have personality.

The subjectivity of the entities without personality is considered when some of their rights are acknowledged, such as the right to a name, to be established and to be governed by their statutes (c. 304); the right to be protected by the authority, and the right to be able to cooperate in the mission of the Church with its apostolic action (c. 298).This is true as well when it is acknowledged that its members may enjoy privileges, indulgences, and other favors (c. 306); and that they can designate a moderator, administrator, and such-like. Their subjectivity is also considered when it indicates the possibility of being suppressed by the competent authority (cf. c. 326 § 1). Canon 305 perhaps more clearly states that law cannot fail to consider these subjects. It includes all types of associations under the vigilance of the authority in such a way that, in this regard, associations without personality are assimilated with those that in fact do have personality.[6]

One of the main juridical consequences of the lack of personality is thst under current norms, general subjectivity is not sufficient for the acknowledgment of the capacity for patrimony rights. For these subjects without personality, because they are such, the capacity to acquire and own goods is not recognized, although the faithful who are a part of these entities can acquire and own goods as joint owners or joint possessors (c.310).

The fact that private associations have been approved or recommended (c. 299 § 2), or have been authorized to use the term 'Catholic' as a formal name (c. 300), does not affect the fact that they do or do not have juridical personality. The subordination of associations to the authority in obtaining personality means that one cannot speak about a true right of the faithful to constitute private juridical persons.[7] What does exist is a *le-*

4. Cf. *Comm.* 12 (1980), p. 125; 21 (1989), p. 141.
5. Cf. Comm. 12 (1980), p. 125.
6. Cf. R. NAVARRO VALLS, "Las asociaciones sin personalidad...," cit., pp. 555–556.
7. Cf. P. LOMBARDÍA, "Personas jurídicas públicas y privadas," cit., p. 626.

gitimate expectation of obtaining it, because recognition of juridical personality cannot be considered a donation, a grace, or a merely discretionary act of an ecclesiastical authority.

The norms from the Conference of Bishops of Spain on canonical associations on a national level state the following: "The granting of juridical personality is not an automatic result of every request, but rather, a judgment by the competent authority must come into play with regard to the nature of the association, pastoral viability, guarantees of continuity, as part of its charism as a cautious moderator of gifts and of offices with a view to the common good."[8] In other words, the authority's duty is not always to grant personality, nor is it a mere act of generosity, but rather a discretionary act governed by the provisions of c. 114. It would not make any sense, and it should not happen, for an authority to systematically refuse to recognize private associations or to grant personality. This type of action would not only be condemned as unjust by the higher authority; it could also be appealed in a given case by anyone whose right to associate was violated or whose legitimate expectations were thwarted by such arbitrariness.

Together with the legitimate expectation of obtaining personality, the authority also has the right to reply through the proper channels, principly, expressing his decision in a decree. The association may have recourse against the authority's decision if the request for personality is denied.

2. *Approval of the statutes*

For the associations to acquire personality, the canon requires that their statutes be approved, which implies that, in connection with mere *recognitio*, "the discretionary scope of ecclesiastical authority be broadened, although in due measure, avoiding all arbitrariness, given that one must always value, respect, and guarantee the right of the faithful to associate."[9]

In order to truly understand what the legislator intended in § 2 of this canon, we must consider the terms employed—statuta ab auctoritate ecclesiastica ... sint probata—and the difference entailed in these terms governing other acts of the authority in connection with the statutes; concretely, the difference implied with the act established in c. 299 § 3—statuta ab auctoritate competenti recognoscantur. *Recognitio*, the recognition of the statutes of c. 299 § 3, is broader, less specific than the *proba-*

8. Cf. CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional,* April 24, 1986, no. 25, in *BOCEE* 3 (1986), p. 82. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

9. L. MARTÍNEZ SISTACH, *Las asociaciones de fieles* (Barcelona 1994), p. 110.

tio of c. 322 § 2. *Recognitio* is only an act of control by the authority to verify if the association shows signs characteristic of the right to associate in the Church, or, if an ecclesial quality is manifest in the association.[10] Thus it is a kind of *nihil obstat.* On the other hand, *probatio* of the statutes, from c. 322 § 2, entails something more than acknowledgment of the Christian authenticity of the association, its objectives, and its means. By means of this act, the authority becomes more specifically involved. In private associations, the authority performs certain acts that may be described as "guardianship control". In public associations, to the extent that the associations receive a specific mission from the Hierarchy (cf. c. 313), the authority has certain responsibilities that could be described as "hierarchical control," because, with respect to the mission, the association is wholly subordinate to the Hierarchy. The objective of guardianship control is to maintain the juridical order, to ensure the legality of the guarded entity.[11]

The term *probatio*, which differs from the term *approbatio* used for public associations (cf. c. 314), probably does not have any particular significance.[12] One author, however, has noted that in the initial drafting *statuta approbata* was changed *to statuta probata* and, in his opinion, the change "attempted to diminish the juridical force of the authority's intervention in order to stress the faithful's right to associate, including when the association wishes to obtain juridical personality."[13]

In the event that approved statutes are amended, the associations must request another review, and approval, if appropriate, from the authority.[14]

3. *The authority entrusted with approval of the statutes and the recognition of juridical personality*

Which authority is competent to approve the statutes and grant personality, by analogy with the provisions of c. 312 § 1 for public associations, depends on the particular case: the Holy See with regard to universal and international associations; the Bishops' Conferences for as-

10. Cf. L. F. NAVARRO, *Diritto di associazione e associazioni...*, cit., p. 83; G. FELICIANI, "Il diritto di associazione e la possibilità della sua realizzazione nell'ordinamento canónico," in *Das konsoziative Element in der Kirche...*, cit., pp. 397–418.

11. Cf. L. PRADOS TORREIRA, "La intervención de la autoridad sobre la autonomía estatutaria," in *Das konsoziative Element in der Kirche...*, cit., pp. 471–473.

12. Cf. G. FELICIANI, "Il diritto di associazione e la possibilità...," cit., pp. 409–411; L.F. NAVARRO, *Diritto di associazione e associazioni...*, cit., p. 98, note 155. Also cf. cc. 23 and 26, in which "approbata" and "probata" are used indiscriminately.

13. J. MANZANARES, "Las asociaciones canónicas de fieles. Su regulación jurídica," in *Asociaciones canónicas de fieles*, cit., p. 122. Cf. *Comm.* 18 (1986), p. 238; *Schema canonum libri II de Populo Dei* (1977), c. 65, in *Comm.* 12 (1980), p. 118.

14. Cf. L. DE ECHEVERRÍA, commentary on c. 321, in *Salamanca Com.*

sociations on a national level; and the diocesan bishop for diocesan associations. Exceptions to this are any associations whose right to be recognized and approved has been reserved by the Holy See for other entities (which occurs, for example, in associations that are directly subordinate to institutes of consecrated life).One might wonder if a diocesan bishop has any competence over private national or international associations that, already possessing the proper recognition and approval that attempt to establish themselves in a given diocese. The Code contemplates this situation, but only with regard to public associations; c. 312 § 2 provides that written consent from the diocesan bishop is required to establish each of these divisions. Private associations do not need any erection by the ecclesiastical authority in order to be established, and written consent from the diocesan bishop will not be required (c. 312 § 2). Nonetheless, it is no less true that said associations must also be subjected to certain control by the diocesan bishop. Thus the Spanish Bishops' Conference, in its Instruction on Associations of the Faithful, has provided that if "it is a private association, it will not be constituted in the diocese without prior notice of the diocesan bishop in order that he execute the express norms related to his pastoral governance over all types of associations (cf. cc. 264 § 1; 305, 323, 394, 1263), and it shall so be reflected in the statutes."[15] Note the difference between the universal provision for public associations (written consent from the diocesan bishop), and the requirement in the special rules of Spain for private associations (notice to the diocesan bishop).

Canon 322 deals only with approval of the statutes and recognition of personality. Nothing is said in this canon about vigilance or the authority's governance over the various types of associations that have been approved and recognized. The following canon, c. 323, outlines these duties. In principle, we must state that those responsibilities do not affect the associations themselves, nor are they the same in all cases. Each authority has responsibilities over associations founded in his territory, a distinction is always made between the general obligation to be vigilant and the particular capacities of the system. It is particularly interesting to note the distinction between the competence of the bishops' conferences and of the diocesan bishops, which is resolved by the provisions of cc. 305 and 323.

15. CBS, *Instrucción sobre Asociaciones canónicas...*, cit., no. 9, p. 80.

4. *Other differences in private associations. Associations approved, recommended; which can use the term "Catholic"*

In addition to *de facto* associations and the difference with regard to personality, the Code establishes other differences in associations.[16] These differences are contemplated in the canons containing common rules on associations (cc. 298–311) and therefore, may also affect public associations, even though their particular relevance is in connection with private associations.[17] Public associations receive their fundamental character from their establishment by the authority and, in comparison to this act, other possible acts of the hierarchy, such as specific approval or recommendations, would have little juridical relevance. To be specific, the distinctions indicated in the Code are the following: associations of the faithful may receive various types of recognition or approval from the authority (cf. c. 298 § 2),[18] and given that all associations of the faithful are Catholic, only those associations having received express permission may use the term 'Catholic' as a formal name (cf. c. 300). This latter provision is an option appearing in other places in the Code, which, with a very suitable technical solution, distinguishes between what is materially and what is formally Catholic.[19]

One author considers that any private association having personality, due to this fact itself, may use the formal term "Catholic."[20] However, we believe that, according to c. 300, it is more appropriate to state that private associations may be called "Catholic"—with the use of this term as a formal name—only with the express consent of the competent authority. The situation may be different for public associations (see commentary on c. 300).

Approval, recommendation, and the authorization itself for use of the term "Catholic" do not imply that the authority has any greater capacity to intervene in those associations, even though those acts do imply the duty of the authority be more vigilant, because by these acts, a particular subjective attitude of the Hierarchy is made public. The conduct of the association may motivate the authority to withdraw such recognition, if nec-

16. Cf. W. Schulz, *Der neue Codex und die kirchlichen Vereine* (Paderborn 1986); idem, "La posizione giuridica delle associazioni e la loro funzione nella Chiesa," in *Apollinaris* 59 (1986), pp. 120–126.
17. Cf. W. Schulz, *Der neue Codex...*, cit., pp. 48–52.
18. Cf. J. Manzanares, "Las asociaciones canónicas...," cit., p. 130; S. Bueno Salinas, "Personalidad jurídica...," cit., p. 102; W. Aymans, *Kirchliche Vereinigungen* (Paderborn 1988), pp. 90–91.
19. Cf. J.A. Fuentes, "La función de enseñar," in *Manual de Derecho Canónico* (Pamplona 1991), pp. 449–451; J. Hervada, "Sobre los estatutos de las universidades católicas y eclesiásticas," in *Vetera et Nova. Cuestiones de Derecho canónico y afines (1958–1991)* (Pamplona 1991), p. 969.
20. Cf. L. Chiappetta, *Il Codice di Diritto Canónico. Commento giuridico-pastorale*, t. 2 (Naples 1988), commentary on c. 300, p. 384.

essary. In contrast to the meaning of approval and recommendation, we must admit that the authority may come to advise against a given association, or to publicly declare that it is not acting in accordance with its statutes.[21]

Private associations may also be distinguished by their members: they may be the faithful (c. 298), secular clergy (c. 278), or laypersons (c. 327). Another way of distinguishing associations is by their geographical scope (c. 312, cf. c. 322). Similar to the existence of confederations of public associations, considered in c. 313, there may also be groupings of private associations.

21. Cf. J.L. GUTIÉRREZ, commentary on c. 323, in *Pamplona Com*; J.T. MARTÍN DE AGAR, "Gerarchia e associazioni," in *Das konsoziative Element in der Kirche...*, cit., p. 306.

323 **§ 1. Licet christifidelium consociationes privatae autonomia gaudeant ad normam can. 321, subsuntvigilantiae auctoritatis ecclesiasticae ad normam can. 305, itemque eiusdem auctoritatis regimini.**

§ 2. Ad auctoritatem ecclesiasticam etiam spectat, servata quidem autonomia consociationibus privatis propria, invigilare et curare ut virium dispersio vitetur, earumque apostolatus exercitium ad bonum commune ordinetur.

§ 1. Although private associations of Christ's faithful enjoy their own autonomy in accordance with can. 321, they are subject to the supervision of ecclesiastical authority, in accordance with can. 305, and also to the governance of the same authority.

§ 2. It is also the responsibility of ecclesiastical authority, with due respect for the autonomy of private associations, to oversee and ensure that there is no dissipation of their forces, and that the exercise of their apostolate is directed to the common good.

SOURCES: §1: cc. 336 §2, 690 §1; SCCouncil Resol., 13 nov. 1920 (*AAS* 13 [1921] 135–144)
§2: *CD* 17; *AA* 19

CROSS REFERENCES: cc. 114 §3, 305, 321, 392, 397

COMMENTARY

José A. Fuentes

1. *The relations of private associations with ecclesiastical authority*

Associations are subject to the authority, principally the authority that has reviewed or approved their statutes (cf. cc. 312, 322), in different ways according to the nature of each association. The subordination of private associations is different from the subordination of public associations.

Leaving aside the provisions on approbation of statutes and recognition of personality, which issue as to private associations is regulated in c. 322, c. 323 makes provisions on the relationships between these private associations and the authority, and it does so by distinguishing three issues First it acknowledges their necessary autonomy; second it indicates

that these associations are under the supervision of the authority; and lastly it indicates that there is a governance by the authority affecting them. The exact tenor of c. 323 considers supervision and governance as two distinct functions of the authority.

As regards supervision and governance, taking into account the tenor of the canon, and the reference that is made to c. 305, we must determine how they affect private associations. We must also specify the areas of competence attributed to the Holy See, to the bishops' conferences, and to the diocesan bishops. On specific issues, for example, on abuses in ecclesiastical discipline, the general responsibility of the authority is specified in more detail in other canons; (thus, reference is made to abuses in c. 392).

2. *Autonomy*

The autonomy of private associations is the first characteristic of associations proclaimed in this canon. It is expressly set forth in both paragraphs of the canon. Moreover, in the first paragraph, reference is made to c. 321, which is the first of the canons on private associations, in which the proper autonomy of these entities is definitely shown, indicating that they *are governed* in accordance with their statutes. Therefore the intent of c. 323 is not to speak about autonomy, or governance, or supervision only, but how these aspects complement each other. It attempts to state that "the autonomy characterizing the administration and governance of these (private) associations must be harmonized with the supervision and governance by the authority."[1]

Protection of the associations' autonomy is accomplished mainly in two ways: firstly, through universal and specific laws defending and promoting the right to associate as well as each association in particular; and in the second place, through acknowledgment of statutory autonomy.

The proper relationship between associations and the authority is dialogue. In addition, communion on the part of the faithful is required, and on the part of the authority, (*diaconia*) service (*CL* 31). The authority demonstrates that service by respecting, encouraging, and facilitating the autonomy of the faithful in associations, and that of the associations simply because they are associations. This canon shows, as the particular laws should also show, that the authority considers autonomy, that is, the

1. Cf. CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional*, April 24, 1986, no. 26, in *BOCEE* 3 (1986), p. 82. For complementary norms promulgated by English language conferences of bishops, see Volume V, Appendix 3.

free activity of the faithful, and the common good, as measuring instruments when regulating the exercise of the right to associate.[2]

As a result of this dialogue, and in an attempt to have "the exercise of the apostolate be directed to the common good," in some cases, the authority may suggest for associations a preferable dedication, or a change in activities, in order to avoid objectives opposed to those established as proper to the association.[3] This capacity of the authority, which is set forth in the last words of § 2 of the canon, cannot be interpreted as opposing the associations' autonomy. The rule justifies this action by the authority, stating that it is a part of its responsibility to avoid "dissipation of forces." During the drafting of the code, this principle of action, which originated from the Council (*AA* 19, 24), was explained in the following terms, "Haec coordinatio ex parte Hierarchiae fieri semper debet servata natura propria uniuscuiusque associationis. Coordinatio enim numquam intellegi potest—hoc quidem esset abusus auctoritatis—sicut quaedam 'uniformatio' vel 'planificatio' apostolatus. In vita Ecclesiae pluralitas viget apostolica, ex diversitate charismatum promanans."[4] Coordination cannot be understood as uniformity or exclusion. That would be an abuse of authority. This diversity of activity, which is always welcomed and respected by the organs of Church governence, is a manifestation of the richness of the people of God.

Therefore, the fact that the canon defines the authority to act as that of a coordinator to "avoid dissipation of forces" does not establish a capacity to limit the right to associate. This explanation of the relationship between associations and the authority, and specifically the last statement of the canon, rests on the same rules of interpretation, especially on the provisions of cc. 17 and 18. We must understand the last words of c. 323, abiding by the terms themselves, taking into account the related areas, and explaining them in their strictest sense if they can imply a limitation on the free exercise of rights. The free exercise of the fundamental right to associate cannot be hindered by the responsibility of coordination of the ecclesiastical authority. However, as has been noted, this canon, due to its wording and location, does not concern the recognition of associations as much as it concerns their development.[5] If associations fulfill the requirements provided in law, they must be recognized. They then may be coordinated with other associations, and with the other pastoral initiatives and

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2. Cf. E. CAPARROS, "La rechristianisation de la société: le rôle des laïcs dans la perspective du canon 225," in *Fidelium Iura* 3 (1993), pp. 72–73.

3. Cf. L.F. Navarro, *Diritto di associazione e associazioni di fedeli* (Milan 1919), pp. 119-120.

4. *Comm.* 18 (1986), pp. 239–240.

5. Cf. G. FELICIANI, "Il diritto di associazione e la possibilità della sua realizzazione nell'ordinamento canónico," in W. AYMANS-K.T. GERINGER-H. SCHMITZ (eds.), *Das konsoziative Element in der Kirche. Akten des VI. Internationalen Kongresses für kanonisches Recht, München, September 14–19, 1987* (St. Ottilien 1989), pp. 416–417.

actions, but always with respect for their autonomy. Coordination is not exercised in the same way with public entities as with private entities.

3. *The vigilance of authority over private associations*

In these associations in which there is no direct cooperation with the specific hierarchical responsibilities, the authority's supervisory mission is more important than its governance. What is most proper to the authority in its relationship with private associations is supervision and guidance with respect to doctrine, and above all, when necessary for promoting the goods of the supernatural order.[6] Because private associations are concerned with what their function is as faithful simply because they are the faithful, the authority only exercises general higher supervision over them. Canon 305 sets forth the obligation of the authority to supervise associations, but supervision is provided for again in c. 323, in this case referring to private associations.

Supervision "within the respect for the identity of each association,"[7] shall be exercised in each case according to the characteristics, and the applicable law, of each subject; in other words, in subordination to the statutes. This subordination does not violate the hierarchical responsibility, because what all types of laws are meant to do, is to properly channel the actions of everyone, the faithful as well as the authority.

According to c. 305 § 1, associations are subject to the right of visitation (cf. c. 397). Whether or not this canon includes private associations is not an easy question. It must be noted that c. 305, which is in the chapter on general norms of associations, deals explicitly with "all associations." In any event, the fact that that canon makes the so-called right of visitation subordinate to "law and the statutes" must be taken into account. Taking these terms into account, as a specific right for the diocesan bishop to visit associations without personality is not provided for in universal law, it may be stated that this right only exists if it is contemplated in the statutes (cf. cc. 305 and 397 § 1).[8] In conflict with this interpretation, the Instruction from the Conference of Bishops of Spain can be cited, which in fact cites c. 305 as an example of pastoral governance of the authority over all kinds of associations.[9]

6. Cf. G. FELICIANI, "I diritti e i doveri dei fedeli in genere e dei laici in specie. Le associazioni," in S. FERRARI (ed.), *Il nuovo Codice di Diritto Canónico. Aspetti fondamentali della codificazione postconciliare* (Bologna 1983), p. 269; J.A. MARQUES, "O direito de associaçao e as associaçoes de fiéis na Igreja a luz do Vaticano II e do novo Código de Direito Canónico," in *Theologica* 19 (1986), pp. 488–490.

7. CBS, *Instrucción sobre asociaciones canónicas...*, cit., no. 26, p. 82.

8. J. L. GUTIÉRREZ, commentary on c. 305, in *Pamplona Com.*

9. Cf. CBS, *Instrucción sobre asociaciones canónicas...*, cit., no. 9, p. 80.

The supervision and coordination required by associations has been determined recently in the so-called "criteria of ecclesiality," which summarizes some tendencies that would evidence the ecclesial authenticity of the life of an association. John Paul II has expressed it as follows, "the priority given to the universal call to holiness; the commitment to profess the Catholic faith in communion with the magisterium; the testimony of communion with the Pope and with one's bishop; participation in the apostolic mission of the Church" (cf. *CL* 30). These fundamental signs of ecclesiality must be manifested in concrete fruits in the life of the associations as the desire to pray, liturgical and sacramental life, catechetical efforts, charitable works, the spirit of generosity, etc. (cf. *CL* 30).

Supervisory control by the authority will be greater if they are associations that have received approval or recommendation (cf. cc. 298 § 2 and 299 § 2). See c. 325 for the authority's supervision over the patrimony of private associations.

4. *The governance of authority over private associations*

Self-governance by these associations is as indicated in the respective statutes (cf. c. 321). In addition, they are affected by a few provisions of governance found in universal law, and there may be others on a specific level. The governance by the authority depends on the right and duty "of legislating for and of judging their subjects, as well as regulating everything that concerns the ordering of divine worship and of the apostolate" (*LG* 27, cf. *AA* 24).

Unlike supervision, governance of these associations by the authority is not defined in the canon. While the Code was being revised, there was a statement explaining that governance, but it was deleted. At first, the provision that would be later promulgated as c. 323 indicated that these associations were subordinate to that governance "eadem ratione eodemque modo quo eidem subiiciuntur fideles singuli." These last words, equating the subordination of private associations with the subordination of the faithful as individuals, were later deleted. The deletion of that text, which would have been accepted by doctrine,[10] has caused a technical inaccuracy that is redeemed by the canonical provisions as a whole.

10. Cf. E. MOLANO, *La autonomía privada en el ordenamiento canónico. Criterios para su delimitación material y formal* (Pamplona 1974); P.A. BONNET, "De christifidelium consociationum lineamentorum, iuxta Schema 'De Populo Dei' Codicis recogniti anni 1979, adumbratione," in *Periodica* 71 (1982), p. 545; A. DEL PORTILLO, "Ius associationis et associationes fidelium iuxta Concilii Vaticani II doctrinam," in *Ius Canonicum* 8 (1968), p. 14.

To one author, elimination of these terms is of no significance because, in his opinion, it was only a redundancy.[11] Nonetheless, it seems appropriate to attempt to explain why those terms were deleted, defining the consequences thereof. The deletion may be motivated by a concern or distrust regarding what the autonomy of private associations may entail. This interpretation should be discounted, because the real risk for the Church does not come as much from private associations as from the potential exploitation of the public entities (potential exploitation of the faithful by the authority and of the authority by the faithful).[12] Another possible reason for this deletion is the desire to clearly state the existence of universal governance, small but real, affecting private associations of the faithful. This would clarify the fact that private associations are not only affected by provisions regarding the faithful as individuals, but also by some specific provisions on the faithful united in this type of association.[13] In fact, this is the only important consequence of eliminating the section: affirming the existence of governance over private associations of the faithful by the authority. Governance, however, is nothing other than what is indicated by the canons. The canon contains some concrete capacities and provisions, such as the possibility established in c. 326 § 1 that, in particularly serious situations, private associations are to be suppressed by the authority.

The suppression in this section does not change the private nature of associations, because the canons as a whole show the clear difference between private associations and public associations. Moreover, there are many regulatory provisions designed to protect the autonomy of the faithful in associations. Additionally, it must be stated that the Code avoids even the remotest appearance of public management of private entities, because one of the canons proclaiming the necessary autonomy of these associations is c. 323. In its provisions, it confirms that the exercise of power by the authority does not legitimize any interference in the proper autonomy of private associations.[14]

Therefore, private associations have a particular type of subordination to the authority which is differentiated from the subordination proper to public associations (these latter, including the proper subjection of the faithful as individuals, entails some other types of subordination). To be precise, within the many pastoral relationships contemplated in the Code, there are some concrete provisions entailing subjection to the governance by the authority (cc. 324–326). These determinations affecting private associations, entailing subordination in governance , are truly minimal and

11. Cf. R. BACCARI, "L'autonomia privata. Principio genetico delle associazioni nel diritto canónico," in *Das konsoziative Element*..., cit., p. 465.
12. Cf. P. LOMBARDÍA, "Autonomía privada en la Iglesia," in *Escritos de Derecho Canónico y Derecho Eclesiástico del Estado*, t. 5 (Pamplona 1991), p. 229.
13. Cf. L.F. NAVARRO, *Diritto di associazione e associazioni*..., cit., p. 118.
14. Cf. G. FELICIANI, *Il diritto di associazione e la possibilità*..., cit., p. 418.

do not even intend imposition nor interference by the authority in these initiatives of the faithful, but rather render a service, their help, through guidance and encouragement.

The distinction made by universal law regarding governance over public and private associations—a general system of subordination to the authority and a general statutory system—should be maintained in the various specific regulations. It would not make sense for some specific rules to attempt to classify private and public associations together. Such an attempt would have no regulatory value, because it is contrary to universal norms as well as because it goes against the constitutional right to associate.

5. *The proper authority for the governance of and vigilance over private associations*

Which authority handles the limited governance over private associations as established in the Code is: the Holy See for universal and international associations; the bishops' conferences for national associations; and the diocesan bishop for diocesan associations (cf. c. 312 § 1, 1°, 2°, 3°).

The duty of governance is attributed to the Holy See for all associations, and to the ordinary of the location for any associations working in the diocese (c. 305 § 2). The bishops' conferences that have competence for governance, do not have the function of supervision over national associations. The possibility of having supervisory competence was rejected when the Code was being drafted.[15]

Therefore, the conferences have very limited competence. While the Code was being drafted, when it was believed that the conferences would not have the task of supervision in that area, it was also indicated that the faculties of these entities could "create a useless bureaucracy and would go against the nature of the bishops' conferences, namely organs of pastoral consultation, not of governance. It is the exclusive duty of the bishop to supervise associations in his territory, because he has general faculty to supervise the integrity of faith and morals in his diocese. Therefore, it is appropriate to limit the competence of the bishops' conferences to the legislative authority for some cases and eventual approval of statutes..."[16] This has been the decision of the legislator. This does not mean that the conferences no longer have a major influence. In the first place, they exercise influence through approval of national associations, and in the

15. Cf. *Comm.* 12 (1980), pp. 98-99, 104–105; 15 (1983), p. 84.
16. Cf. *Comm.* 12 (1980), pp. 98, 105–106, 117; J. MANZANARES, "Las asociaciones canónicas de fieles. Su regulación jurídica," in *Asociaciones canónicas de fieles* (Salamanca 1987), pp. 136–137.

second place, through the possible norms and guidance regarding associations on a national level. These actions by the conferences cannot fail to influence the regulation and supervision of diocesan associations. Moreover, organizational departments under the conferences may easily fulfill the advisory duty for the diocese with respect to diocesan associations.

6. *Dependence of these associations with regard to the Holy See*

Within the Holy See, determination of which organizations the associations are subordinate, depends on the origin of the association, the faithful of which it is constituted, and, in some cases, the objectives proposed by the association. Thus, a lay association is under the Pontifical Council for the Laity, an association of laypersons and clergy will be under the Congregation for the Clergy and also under the Pontifical Council for the Laity, but if an association intends to be a religious congregation or a secular institute, it will be under the Congregation of Consecrated Life and the Societies of Apostolic Life. In this respect, or with the objectives proposed by the association, there may also be specific subordination. Thus an association having as its main objective extending catechetical activities, independent of the predominant status of its members, would be under the Congregation for the Clergy.[17]

17. Cf. *PB* 94, 97 §1, 111, 134.

324 **§ 1. Christifidelium consociatio privata libere sibi moderatorem et officiales designat, ad normam statutorum.**

§ 2. Christifidelium consociatio privata consiliarium spiritualem, si quemdam exoptet, libere eligere potest inter sacerdotes ministerium legitimein dioecesi exercentes; qui tamen indiget confirmatione Ordinarii loci.

§ 1. A private association of Christ's faithful can freely designate for itself a moderator and officers, in accordance with the statutes.

§ 2. If a private association of Christ's faithful wishes to have a spiritual counsellor, it can freely choose one for itself from among the priests who lawfully exercise a ministry in the diocese, but the priest requires the confirmation of the local Ordinary.

SOURCES: §1: SCCouncil Resol., 13 nov. 1920 (*AAS* 13 [1921] 135–144); *AA* 19

CROSS REFERENCES: cc. 317 §§1 and 3, 321

COMMENTARY

José A. Fuentes

1. *Internal governance in private associations. Appointment of president and officials*

In private associations, the designation of the president and officers depends on what the faithful have freely established in their statutes. Even the procedure for designating and appointing them depends on the provisions of the various statutory norms, because the procedural norms set forth in this respect in c. 119 on the acts of juridical persons are supplemental, as the canon itself indicates.

Although universal law does not provide anything else with regard to the governing structures of private associations, it would be most advisable for the particular law to include the means for facilitating relations between these associations and the authority. Therefore, in some specific provisions, it has been deemed necessary for private associations to be required to report the name of persons designated for presiding over and governing the association each time they are appointed or re-appointed to

their office.[1] This requirement seems particularly necessary when they are associations that have been established as juridic persons.

2. *Appointment of spiritual counselor*

Paragraph two of the canon considers the appointment of a spiritual counselor. This office does not have to exist, but if it does, it is important to distinguish it from a priest for spiritual assistance in public associations. In this regard, two differences must be taken into account. In c. 317 § 1 the moderator of a public association is called the "chaplain" (cf. also c. 318 § 2). This terminological distinction does not achieve total differentiation, however, because in traditional statutes governing public associations, the holder of that office could also be called "spiritual counselor." The important distinction is the difference in the appointment process. The appointment of the "spiritual counselor" in private associations is done by the leaders of the association, requiring only confirmation from the local ordinary. However, in public associations, the ecclesiastical authority itself has the competence to "appoint" the priest to take care of the ministerial service.

The canon indicates that that office will be performed by a priest legitimately exercising the ministry in the diocese, and that confirmation depends on the local ordinary. This norm assumes that any priest may be designated, independently of where he was incardinated. For this appointment to dedication to a ministry, in additional to confirmation from the local ordinary, the consent of the priest's ordinary is also needed.

Associations are not contemplated in the canon. It seems that, if not stated in the statutes or in particular law, the priest must have the consent of his proper ordinary and confirmation from the authority that reviewed or approved the association's statutes (cf. cc. 299 § 3, 312 § 1).[2]

1. This condition is required in the particular normative of CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional*, April 24, 1986, no. 28, in *BOCEE* 3 (1986), p. 82. Cf. L. CHIAPPETTA, *Il Codice di Diritto Canónico. Commento giuridico-pastorale*, t. 2 (Naples 1988), commentary on c. 324, p. 404. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

2. Cf. J.L. GUTIÉRREZ, commentary on c. 324, in *Pamplona Com.* In *Instrucción sobre asociaciones canónicas...*, cit., the CBS indicates that once the organization has completed a free election, "la propia Conferencia, a través del organismo competente, debe confirmarlo, previa consulta al Obispo o Superior mayor respectivo" (no. 28, p. 82).

325 **§ 1. Christifidelium consociatio privata ea bona quae possidet libere administrat, iuxta statutorum praescripta, salvo iure auctoritatis ecclesiasticae competentis vigilandi ut bona in fines associationis adhibeantur.**

§ 2. Eadem subest loci Ordinarii auctoritati ad normam can. 1301 quod attinet ad administrationem erogationemque bonorum, quae ipsi ad pias causas donata aut relicta sint.

§ 1. A private association of the faithful is free to administer any goods it possesses, according to the provisions of the statutes, but the competent ecclesiastical authority has the right to ensure that the goods are applied to the purposes of the association.

§ 2. In accordance with can. 1301, the association is subject to the authority of the local Ordinary in whatever concerns the administration and distribution of goods which are donated or left to it for pious purposes.

SOURCES: —

CROSS REFERENCES: cc. 264, 310, 1257 § 2, 1263, 1265–1267, 1269, 1280, 1301, 1302, 1413, 2°

COMMENTARY

José A. Fuentes

1. *Patrimonial management of private associations of the faithful*

This canon sets forth the balance between the patrimonial autonomy of private associations and the authority's supervisory responsibility. The canon determines these three basic points regarding the goods of private associations: a) that the administration of these goods is statutory; b) that the absolute autonomy implied by this system is combined with the authority's general supervisory duty; and c) that there is a specific and particular administrative system for goods received by these associations for pious purposes.

The governance of private associations, regarding possession and administration of goods, is defined in the following principle of juridical acts: it is a system that, unless expressly stated otherwise, depends on the statutory rule. The canon expresses it thus: they act "freely," "according to

the provisions of the statutes," in the "possession" and "administration" of their goods. The financial autonomy of private associations is established in c. 325 and in c. 1257 § 2. The authority itself fulfills its function with regard to associations to the extent that it respects and defends their domain and full capacity for administration.

The statutes are not to be inconsistent with the code, nor can they conflict with it. Therefore the statutory rules should be duly recognized not only to give due importance to the effective autonomy of the faithful, but because the relationship between the Hierarchy and these associations, along with the specific hierarchical responsibilities in this regard, depends on these statutes.

Autonomy in the governance and in the life of private associations is manifested in the clear and diverse entitlement which specifies that its operations fall to the hierarchy and to each association. This clear distinction in conduct safeguards each association and, above all, the hierarchy itself. The hierarchy has no reason to be involved by the acts of private juridical persons, and in fact, patrimonial matters are one of the spheres in which it is most important to distinguish responsibilities and commitments. As the canon indicates, and as we shall see below, the hierarchy is only directly involved in the administration and distribution of goods received for pious causes.

Canon 325 should be interpreted together with the canons on the administration of goods in book V. It is not, however, subordinate to all the canons of the book dealing with the temporal goods of the Church, because the provisions of book V, according to c. 1257, only affect the goods of private associations when the codal norm so expressly indicates. Thus, for example, if a private association has its own personality, its patrimonial actions will not depend totally on the norms of book V, but only by those rules expressly referring to private juridical persons.[1]

The norms of the Code concerning the ownership rights of associations, the difference between public and private persons, and within these categories, between those that do and do not have personality all depend on the following fact: that associations have goods consisting of diverse patrimony for each member of the association. Civil as well as canonical regulations are designed to furnish tools which respect that patrimonial autonomy. To this end, in addition to recognition of juridical personality, which is the most reliable method for ensuring that patrimonial independence, other tools will also be sought to ensure the distinction of financial responsibilities in associations not having such personality. Therefore, what is of concern is how to distinguish between the financial responsibilities of the association and those of each of its members. These objectives

1. Cf. F. AZNAR GIL, "Los bienes temporales de las asociaciones de fieles en el ordenamiento canónico," in *Asociaciones canónicas de fieles* (Salamanca 1987), p. 212.

are achieved through the provisions of the statutes and through some general rules. Concretely, c. 310, which is one of the canons found in the chapter on "common norms" for associations, solves the problem of ownership of goods for associations without personality. That is, it solves the problem of patrimonial responsibility for those situations in which there is no subject with full recognition of rights and obligations by stating that the faithful "can jointly contract obligations and acquire rights and possess goods as co-owners and co-possessers." In this case, the law, in keeping with the meaning of personality, has to assume that if there is no personality, the legal owner is not the association, but the faithful as co-owners and co-possessors.

The independence of private associations, those having juridic personality as well as those that do not, demonstrates that the 1983 Code has taken an unprecedented step in supporting the autonomy and the responsibility of the faithful in the evangelical mission of the Church. This step, this new orientation, would have been rendered ineffective if it were not provided with a coherent method of ensuring the autonomy of the faithful in associations in regards to their financial goods. This is ensured in book V of the Code (c. 1257), with the adoption of a basic legal provision complementing the existence of private juridic persons. Only the goods of public juridical persons qualify as ecclesiastical goods, and therefore, the canons of book V of the Code only govern these persons, "unless express provision is made to the contrary."

The distinctions in the Code and, above all, the difference between ecclesiastical and non-ecclesiastical goods, among those that are considered as belonging to private associations of the faithful, are very effective and are sufficiently clear. A good deal of confusion, however, may arise from the suggestion that the goods of private associations be classified as *ecclesiastical,* justifying it by the fact that all associations, including private associations, are part of the Church. If *ecclesiastical* is understood to mean everything in the Church, the adjective does not seem very appropriate, because in truth, an ecclesiastical asset is everything in the Church, from graces and gifts to physical persons. But in fact, that expression is not only non-specific, it also leads to imprecision, because it presents a distinction that is not real in the current code. There are not three types of goods: *ecclesial, ecclesiastical,* and the rest. There are only two types of financial goods: goods belonging to the Church, that is, ecclesiastical goods, and goods not belonging to the Church. Introducing an indefinite classification into property relations is either clearly useless, because ownership of material things requires a clear definition, or it leads us to an imprecision that may entail in practice equating all types of goods in associations, be they public or private, with what are technically referred to as *ecclesiastical goods.* But this intent is so clearly *contra ius* that it can have no effect whatsoever, at most it would only reverse the option assumed by the legislators in the Code of 1983.

As provided in c. 1280, in associations with juridic personality, there would be a board for financial matters or, at least, two board members assisting the administrator in his duties.

2. *Vigilance of authority to ensure that the goods of the association are used in accordance with its social objectives*

The canon expressly provides that the purpose of supervision by the authority is to ensure that the goods of these entities are used for the purposes of the association, (in fines associationis adhibeantur). The Bishops' Conference of Spain, in its Instruction on canonical associations on a national level, indicates that this supervision over the administration of goods is undertaken to seek the "guardianship of the purpose of the association and of the common good of the Church."[2] There can never be a conflict between the good of the Church and the purpose of the association, because if that conflict is manifested in the statutes, the authority would not be able to recognize said rules, which would definitely imply that said association could not be considered an association of the faithful. Therefore, what the authority does when supervising is to confirm that the goods are used in accordance with the purposes established in the specific statutory regulations.

The authority responsible for that supervision is none other than the authority who has examined the statutes and, if applicable, who granted private juridical personality. The Holy See is responsible for international or universal private associations, and the diocesan bishop for all other private associations. The bishops' conferences are not recognized as having supervisory vigilance (cf. cc. 305 § 2 and 323).

Acts proper to supervisory control by the authority may be quite varied, but they will be different from controls established by universal law for public associations. It would not only go against the sense of this canon 325, but also the general reform of the *CIC* to suggest that the controls established by the Code for public associations would also affect private associations, by requiring that they appear in their statutes. This has been the understanding of the Conference of Bishops of Spain,[3] when it indicated that the lack of control was not the result of "a gap in the norms, to be freely filled by a lower legislator, but rather the express will of the supreme legislator who, due to the new juridical nature of these entities,

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2. Cf. CBS, *Instrucción sobre asociaciones canónicas de ámbito nacional*, April 24, 1986, no. 30, in *BOCEE* 3 (1986), p. 83. For complementary norms promulgated by English language conferences of bishops, see Volume V, Appendix 3.

3. Ibid.

has desired that there be a freer and more autonomous system for administering goods."[4]

Any attempt to deprive these associations of patrimonial autonomy, besides going against the requirements of the code, would be totally ineffective. The faithful would channel their patrimonial freedom in another way. Thus, it would not be consistent with the distinction established by universal norms if the annual rendering of accounts, which is required of public associations according to cc. 319 and 1287, were also required or imposed in the statutes of private associations. The authority may fulfill its supervisory function without the need to eliminate that difference and, in specific situations, if there are suspicions or claims of improper use of goods of association, it may require a rendering of accounts. Among the canons in book V that would be applicable to private associations are c. 1263, regarding special taxes, c. 264 regarding the seminary tax, c. 1265 regarding collections, and c. 1267 regarding donations.

According to some authors, ordinary intervention by the authority in private associations with juridic personality would include the so called acts of the extraordinary administration, as established in cc. 1291 and 1295. This is due to the nature of these associations, and because it would be the only way in which the authority could fulfill the supervisory duty established in c. 325 § 1.[5] However, it would seem better to state that the supervision discussed in c. 325 does not include the controls established for the so-called acts of extraordinary administration. These acts could be controlled, however, if, in a particular case, there was a suspicion that certain acts not only caused patrimonial prejudice to the associations, but that the goods were no longer used for the objectives of the association.[6] It cannot be understood that cc. 1291 to 1295 are generally applied to private associations whether or not they have personality, because, according to the provisions of c. 1257 § 2, an express reference to these associations would be necessary for them to be affected by its provisions. Moreover, should this occur, it would imply that in practice the difference between public and private associations would disappear.

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4. J. MANZANARES, "Las asociaciones canónicas de fieles. Su regulación jurídica," in *Asociaciones canónicas de fieles*, cit., p. 134; cf. L. F. NAVARRO, *Diritto di associazione e associazioni di fedeli* (Milan 1991), p. 127.

5. Cf. F. AZNAR GIL, "Los bienes temporales de las asociaciones de fieles...," cit., p. 212.

6. Cf. L. MARTÍNEZ SISTACH, "Asociaciones públicas y privadas de laicos," in *Ius Canonicum* 26 (1986), pp. 173–177. In opposition to this interpretation, cf. F. AZNAR GIL, "Los bienes temporales de las asociaciones de fieles," cit., p. 195; idem *La administración de los bienes temporales de la Iglesia*, 2nd ed. (Salamanca 1993), pp. 427–429.

3. *Dependence on the local Ordinary in matters regarding goods received for pious causes*

Canon 325 § 2, *in fine*, during the drafting of the code, once stated that it was dependency on c. 1515 of the *CIC*/1917, which established for private associations a unique and specific dependency on the local ordinary. They are under his authority with respect to the goods received for pious causes (cf. c. 1301). Canon 1515 of the *CIC*/1917 and c. 1301 of the current code do not refer to the local ordinary, but rather to any ordinary.

This local ordinary, who has no other mission than to ensure compliance with pious bequests, is the ordinary of the place that is the recipient of the pious legacy or cause. This depends on compliance with the regulations on pious bequests, in the reference to c. 1301 and related references. It is a firm point in the code that one must comply with the purpose of the bequest specifying whether the benefit is to the given place or to the institution for which the pious bequest is intended. The related reference confirming this interpretation is the canon which determines the proper ordinary in connection with the trust (cf. c. 1302 § 3). In fact, in some situations it would not be easy to define who that local ordinary is. Thus, when goods are left for pious causes in general, without specifying more, it is debatable whether it is the ordinary of the place where the goods are administered or of the association's headquarters. Because of this difficulty, the traditional solution is to assign this responsibility, and with it any benefit that may arise from the goods, to the ordinary of the last domicile of the person making the pious bequest. This same criterion may be applied at present, according to the provisions of c. 1413,2°.

When goods for a pious cause are left to an association that is subordinate to an institute of consecrated life (cf. cc. 311, 677 § 2), and the beneficiary is the same institute or members of the association, pursuant to the provisions of cc. 1301, 1302 § 3 and 1413, 2° *in fine*, the ordinary in charge is not a local ordinary, but rather the ordinary of the institute.

326 **§ 1. Extinguitur christifidelium consociatio privata ad normam statutorum; supprimi etiam potest a competenti auctoritate, si eius actio in gravedamnum cedit doctrinae vel disciplinae ecclesiasticae, aut scandalo est fidelium.**

§ 2. Destinatio bonorum consociationis extinctae ad normam statutorum determinanda est, salvis iuribus quaesitis atque oblatorum voluntate.

§ 1. A private association of Christ's faithful is extinguished in accordance with the norms of the statutes. It can also be suppressed by the competent authority if its activity gives rise to grave harm to ecclesiastical teaching or discipline, or is a scandal to the faithful.

§ 2. The fate of the goods of a private association which ceases to exist is to be determined in accordance with the statutes, without prejudice to acquired rights and to the wishes of the donors.

SOURCES: § 2: c. 1515 § 1

CROSS REFERENCES: cc. 18, 120, 123, 320, 321

COMMENTARY

José A. Fuentes

1. *Dissolution of private associations*

This canon makes express provisions for the dissolution of private associations, implicitly recognizing their right to exist perpetually. The principle of perpetuity, directly provided for juridical persons in c. 120 § 1, must be applied to all types of associations, including those not having juridic personality. Perpetuity of associations implies that, according to the provisions of c. 120, an association remains in existence as long as one member remains, that sole member possessing all the rights of the association.

The canon provides for two types of extinction: by the manner established in the statutes and by a decree of suppression by the competent authority. In addition, an association, *ipso iure*, according to c. 120, which directly affects juridical persons but, by analogy, must also be applied to associations without juridic personality, is extinguished when its activity has ceased to exist for a period of one hundred years.

In the original draft of this canon (c. 69, Schema of 1977) the possibility of associations being suppressed by the authority was not contemplated; there was only a mention of extinction *ad normam iuris et statutorum*. In the Schema of 1980, and in the final text, the possibility of suppression by the authority was included but, the phrase indicating that possibility *ad normam iuris* was removed, because nowhere in the Code does it state that a private association may be suppressed.[1]

Canon 326 § 1 enables the "competent authority," in truly exceptional cases, to suppress a private association. This capacity must be very strictly interpreted (cf. cc. 18, 120, and 215), recognizing the difference between the ability of an authority to suppress public associations versus private associations. In the case of public associations, its capacity is greater, due to the nature of these associations, which could compromise the authority as well as the Church itself. Suppression of private associations is defined by much narrower limits. The statements of the canons themselves show this clear distinction. With regard to public associations, c. 320 § 2 only requires that "grave reasons" exist, leaving the authority full discretion in interpreting these situations. On the other hand, for the suppression of private associations, c. 326 § 1 defines the situation more precisely: it has to cause grave harm to ecclesiastical teaching or discipline, or be the cause of a scandal to the faithful. Merely foreseeing that the association would become ineffective in its aims or operations or even cause harm would not warrant its suppression since the canon states that the reason for suppression is that the association's "activity" itself is causing this harm.

Unlike the case of public associations (c. 320 § 3), it is not expressly required that the association's president and officers be given a hearing before the association is suppressed, but by analogy it seems reasonable that this requirement be met.[2] With respect to any possible appeal of this decision (cf. cc. 1732ff), and its effect, although nothing is expressly stated in the code, by its very nature it would be suspensive. During the drafting of the code, the fact that the suspensive nature of the recourse was justified for public associations as follows, quia si esset in devolutivo et recursus a Sancta Sede recipiatur, tunc auctoritas inferior consociationem suppressam denuo erigere deberet.[3] It seems that the same criterion may be applied to private associations, although the intervention by the lower authority would be different.

The fact that an association of the faithful may be suppressed does not imply a denial of the right to associate. On the contrary, it is based on the right to associate and defends it. The reason is that there is no longer any true right to associate, because when the faith or the core of ecclesias-

1. Cf. *Comm.* 12 (1980), p. 121.
2. Cf. L. de Echeverría, commentary on c. 326, in *Salamanca Com.*
3. *Comm.* 18 (1986), p. 236.

tical discipline is endangered, the limits of the fundamental rights of the faithful are exceeded.[4]

2. *Limitation of activities*

This canon enables the authority to suppress associations in very special situations, but we must ask if this means that the authority itself is allowed to intervene by limiting the activities of the association. Although it may do this in connection with public associations (c. 318 § 2), in principle, the authority does not seem to have the capacity to remove authorities from private associations even in grave situations. One author believes that this capacity is understood,[5] but it does not seem that it could be introduced into the governance of entities not directly subject to it in such a way that it would suppress the autonomy of the faithful. If there is cause, the authority must assume its responsibility and become involved by suppressing an association, but in other situations, it can only opt for intermediate solutions envisioned in universal law. We believe that the responsibility of the authority must be necessarily interpreted in this way, because the principle that he who can do more can also do less is not a principle to be applied to the specific capacities for action. Were it otherwise, there would be no differentiation and specificity among the various capacities of diverse physical and juridical persons. Moreover, the capacities of the authority in regards to fundamental rights must be strictly interpreted (c. 18). An exception to this would be if these measures were set down less strictly in the statutes. This is because the authority is the guarantor of all law, including what is set forth in the norms of an association.

Other special interventions by the authority involving limitation on association activity would also have to be regulated. This would be intervention required to defend the right to associate, the communion of the faithful, and the general governance of the Church.[6] Moreover, in any event, these interventions should be clearly distinguished from any possible special actions by the authority in public associations.

Which authority is competent for the suppression and, if applicable, the limitation of association activities, may be inferred from the provisions in a parallel situation: suppression of public associations (cf. c. 320 §§ 1 and 2). The Holy See, bishops' conferences, and the diocesan bishop

4. Cf. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), pp. 104–105.

5. L. CHIAPPETTA, *Il Codice di Diritto Canónico. Commento giuridico-pastorale*, t. 2 (Naples 1988), commentary on c. 323, p. 403.

6. Cf. L.F. NAVARRO, *Diritto di associazione e associazioni di fedeli* (Milan 1991), p. 132 and note 248.

have competence in this regard, depending on which authority reviewed and approved the statutes.

3. *Designation of goods of extinct or suppressed private associations*

In the event of extinction or suppression, the goods of private associations, regardless of whether or not they have personality, must be allocated according to the provisions of its statutes (cf. c. 123). Thus it is necessary that the specific regulations of each association provide for this situation. Otherwise, there would be a gap in the regulations. For those situations for which the statutes do not make a provision, as with public associations, c. 123 provides that the goods go to the higher juridical person. For private associations, reference is made only to the statutes, without any determination for a situation not provided for in its rules. In that case, the designation of these goods must be clarified, taking into account the origin of the association and the objectives for which it was devoted.

CAPUT IV
Normae speciales de laicorum consociationibus

CHAPTER IV
Special Norms for Lay Associations

327 **Christifideles laici magni faciant consociationes ad spirituales fines, de quibus in can. 298, constitutas, eas speciatim quae rerum temporalium ordinem spiritu christiano animare sibi proponunt atque hoc modo intimam inter fidem et vitam magnopere fovent unionem.**

Lay members of Christ's faithful are to hold in high esteem associations constituted for the spiritual purposes mentioned in can. 298. They should especially esteem those associations whose aim is to animate the temporal order with the christian spirit, and thus greatly foster an intimate union between faith and life.

SOURCES: c. 686; Pius PP. XII, Alloc., 5 oct. 1957 (*AAS* 49 [1957] 924–931); *LG* 31; *AA* 2, 7, 19

CROSS REFERENCES: cc. 215, 216, 225, 227, 298 §1, 299, 311, 529 §2

COMMENTARY
José A. Fuentes

1. *Juridical value of the canons regarding lay associations*

The Code ends the regulations on associations with a brief heading on lay associations (cc. 327–329). It is easy to recognize the limited preceptive value of these canons. Some authors, taking this into account, and the fact that some of their statements repeat what is already established regarding all associations of the faithful in general, have viewed all of

chapter IV negatively.[1] Notwithstanding, it must be noted that what the legislators intend, with the exhortations and the few provisions contained in these canons, is simply to demonstrate the importance of the ecclesiastical status of laypersons, and to again define the manner in which laypersons fulfill their ecclesiastical mission, by considering their role in associations.

A careful examination of the revisions made by the legislators shows that the provisions of these canons are fundamental. These canons, because they stipulate very little, confirm that the responsibility of the authority in connection with lay associations is not channeled through establishment and determinations, but rather through encouragement, support, and supervision. Therefore, these canons, more through what they do not say than through what they do, demonstrate a regulatory criterion that, while affecting all associations in general, must be manifested in a relevant way in lay associations. This criterion of universal law, and its particular impact on lay associations, must affect the norms and orientation which on a particular level may be given to associations.

The lay associations considered in these canons do not coincide with what were called "lay associations" from 1917 until Vatican Council II. At that time, the term "lay" was applied to associations that were outside the public system established in the norms of 1917. Now, in cc. 327 to 329 of the Code of 1983, they are associations consisting of laypersons. Here the term "lay," according to the texts of the Council, on which the provisions of c. 327 depend (*LG* 31; *AA* 19), refers to the faithful who are neither clergy nor religious.

2. *Importance of lay associations*

Laypersons, as do any other members of the faithful, have the fundamental right to associate (c. 215). "In the Church, the right to establish an association for religious purposes arises, for lay members of the faithful, from baptism which gives each Christian the possibility, duty, and strength to actively participate in the communion and the mission of the Church."[2] This right was proclaimed during the Council (*AA* 19; cf. also *AA* 15 and *LG* 37; and, after the Council, especially *CL* 29). The first canon on lay associations, c. 327, elaborates c. 125, which proclaims the fundamental right of laypersons, in reality the faithful, to work in order that the divine

1. Cf. E. KNEAL, commentary on c. 327, in J.A. CORIDEN-T.J. GREEN-D.E. HEINTSCHELL (eds.), *The Code of Canon Law. A Text and Commentary* (New York 1985), p. 256; L. DE ECHEVERRÍA, commentary on c. 327, in *Salamanca Com.*

2. JOHN PAUL II, *Audiencia general*, March 23, 1994, no. 3 in *Palabra (Documentos Palabra)* III (1994), no. 36 (English edition: "Lay Groups Promote Church's Mission," in *L'Osservatore Romano*, Weekly Edition, March 30, 1994, p. 11).

message of salvation be spread throughout the world. Evangelical activity, as indicated in c. 225, may be performed on a personal level as well as through an association.

The relevance of associations of the faithful in general, and in particular, of lay associations, is continually proclaimed by the Church authority. "Ecclesial communion, already present and at work in the activities of individuals, finds its specific expression in the lay faithful's working together in groups" (*CL* 29). Although a given association may have an unclear purpose, the right to associate is not incidental, nor is the associated apostolate, because as Vatican Council II indicated, this apostolate is "a sign of the communion and unity of the Church" (*AA* 18). Considering these aspects, it is understood that fostering lay associations is part of the responsibility of pastors. Canon 529 § 2 expressly indicates that one of the obligations of parish priests is to foster lay associations. The importance of associations would suggest that seeking without serious reason to limit the freedom of the faithful to associate, especially lay people, would be senseless, and what is more it would cause grave harm to the Church.

3. *Types and aims of lay associations*

In the canons concerning lay associations, very little is said about the various types of lay associations. Their diversity would therefore depend on the general distinction established for all types of associations: some will be public and others private, and among these private associations, some will have juridical personality and others will not. For lay associations, all the canons under the heading on norms common to associations (cc. 298–311) will apply. In addition, as regards public associations, they will be subject to the provisions of chapter II of this same title (cc. 312–320). If they are private associations, they will be subject to the provisions given under the respective heading, chapter III (cc. 321–326), and c. 310, which appears to be misplaced in the ordering of the canons. Lay associations established by the ecclesiastical authority are public associations (cf. c. 301 § 3). With respect to the possible objectives of these associations, c. 327 considers them by referring to the non-exhaustive listing in c. 298 § 1. Lay associations can undertake any objective that a baptized person may pursue provided that it is consistent with his or her vocation as a member of the faithful. Therefore, they are only limited by the right to associate itself, as well as by the distinction between the rights and capacities of the faithful, simply because they are the faithful who are vested with this authority. This difference in function bars private lay associations from matters considered proper to the Hierarchy or that are particularly linked to the duties of the hierarchy (cf. c. 301 § 1).

John Paul II indicates the importance of diversity in lay associations, the range of their methods and areas of their activity, and that their fundamental purpose is to increase Christian life and cooperate in the mission of the Church. The Roman Pontiff has even stated that the "diversity of forms of associations is not negative; on the contrary, it is a manifestation of the sovereign freedom of the Holy Spirit, that respects and encourages the diverse trends."[3]

4. *Lay associations with the aim of animating the temporal order with a Christian spirit*

The canon specifically indicates that one of the objectives these associations can pursue is the animating of the temporal order with a Christian spirit. This objective, which doubtless has a unique importance for the Church, is directly incumbent on laypersons.

Canon 327 as well as one of the canons discussing the fundamental rights and obligations of faithful laypersons, c. 225, specifically refer to the evangelical activity of animating the temporal order with a Christian spirit. Although all the faithful have the responsibility to transform the world, this duty is incumbent on laypersons in a unique way.[4] It is precisely for this reason, and because those who are not laypersons (namely, members of religious orders and the clergy), although they also have freedom in the temporal order, may be limited in their dedication to the *negotia saecularia* (see for example cc. 278 §§ 1 and 3; 287 § 2; 607 § 3). The principle is set forth in c. 225, and its importance with respect to the associations in c. 327 refers only to laypersons and not to the faithful in general.[5]

The building of the earthly city is not an *ecclesiastical* mission, but rather a *ecclesial* mission.[6] "By reason of their special vocation it belongs to the laity to seek the kingdom of God by engaging in temporal affairs and directing them according to God's will" (*LG* 31). Therefore, in principle, associations pursuing this objective must be private associations, because it is not incumbent "on the Church's pastors to directly intervene in the building up of social life. This duty belongs to the vocation of the laity, who act on their own initiative among their fellow citizens."[7]

3. Ibid., no. 4.
4. Cf. G. LO CASTRO, "I laici e l'ordine temporale," in *Il Diritto ecclesiastico* 97 (1986), pp. 241–258.
5. Cf. Mª BLANCO, "La libertad de los fieles en lo temporal," in *Fidelium Iura* 3 (1993), pp. 29–32.
6. Cf. P. LOMBARDÍA, "El Derecho Público Eclesiástico según el Vaticano II," in *Escritos de Derecho Canónico*, t. II (Pamplona 1973), p. 396.
7. SCDF, Instr. *Libertatis conscientia*, March 22, 1986, no. 80, in *AAS* 79 (1987), p. 590; cf. *GS* 76 and *AA* 7.

The last phrase of the canon indicates that the task of animating the world with a Christian spirit, pursued by lay associations, entails fostering a union between faith and life (cf. *AA* 19). This means that the activities of these associations are to enhance life in such a way that it manifests Christian faith in all human activities: social, cultural, and professional.[8]

There are two principles that must govern the life and conduct of lay associations when they seek to animate the temporal order with Christian meaning. Associations must express their communion with the church, which, among other things, requires obedience to the magisterium, because there are times in which the authority has the obligation to proclaim doctrinal teachings relative to the temporal order (cf. c. 747 § 2).[9] Associations are also, however, to act with autonomy, even with immunity to potential interference by others of the faithful or the Church authority in their temporal duties.[10] Autonomy in temporal affairs is a true right that is asserted with respect to the faithful and the ecclesiastical authority. However, this does not rule out intervention by the hierarchy on matters concerning the magisterium or governance, in accordance with the channels provided (cf. c. 227).[11]

One situation requiring intervention by the hierarchy would be if the association should seek to use the Church, to exploit it, or commitit to temporal obligations. In these cases, there would be no autonomy for those associations, because they would lose the right to associate. Using the activities of an association in this sense is opposed to the very right to associate, and consequently opposed to what private as well as public associations can be. If a given association should adopt this attitude, in order to avoid harm to the Church, the hierarchy must consider even the possibility of suppression. The responsibility of the laity in their temporal actions, be they individuals or groups, must lead them to "be sufficiently Christian so as to respect those in the faith who, in matters of free discussion, propose solutions which differ from those which each one of us maintains; be sufficiently Catholic so as not to use our Mother the Church, involving her in human factions."[12]

8. Cf. JOHN PAUL II, "Discurso en el encuentro con sacerdotes, religiosos y laicos," Bangkok, May 11, 1984, no. 5, in *Insegnamenti di Giovanni Paolo II*, v. VII, 1 (Rome 1984), p 1366.

9. Cf. A. DE FUENMAYOR, "El juicio moral de la Iglesia en cuestiones temporales," in *Ius Canonicum*, 12 (1972), pp. 106–120.

10. Cf. P. LOMBARDÍA, "Los laicos en el Derecho de la Iglesia," in *Escritos de Derecho Canónico*, t. II, Pamplona 1973, p. 190.

11. Cf. Mª BLANCO, "La libertad de los fieles...," cit, p. 23.

12. JOSEMARÍA ESCRIVÁ DE BALAGUER, "Passionately loving the world," in *Conversations with Monseñor Escrivá de Balaguer* (Dublin 1972), p. 140. Regarding the limits of the temporal rights of autonomy, cf. P.J. VILADRICH, "La declaración de derechos y deberes de los fieles," in *El Proyecto de Ley fundamental de la Iglesia* (Pamplona 1971), p. 157.

5. *The political role of lay associations*

The laity have unlimited possibilities for action in the world which are as diverse and as varied as legitimate human activity. Among the social activities in which the lay faithful may be involved, political action is particularly relevant. Paul VI mentions "the vast, complex world of politics, social life, economy ..."[13]

Lay associations are to be involved in political action in such a way as not to involve the Church. If an association has only a political objective that association should be established as a civil association and not as an association of the faithful. In the event that the aim is to animate the social order with a Christian spirit, and within that animation, activities bordering on politics are included, the association must be organized in such a way as to manifest its independence with respect to the pastors and their governance. The Church as an institution, through its hierarchical ministry or through joint activities of the faithful and the pastors, does not engage in any political activity. The Council stated that "it is highly important, especially where there is a pluralistic society, to have a proper concept of the relationship between the political community and the Church and to clearly distinguish between the actions that Christians individually and jointly take on their own behalf, as citizens according to their Christian conscience, and the actions they take in the name of the Church, in communion with their pastors" (*GS* 76). In the diversity of temporal situations, and especially regarding politics, there are not simple solutions. Therefore, respect for free choice in all spheres is required, while distinguishing associations and their concrete solutions, and the mission of the faithful, carried out individually or jointly, and the mission and action of the hierarchy (cf. c. 227).

6. *Dependence of lay associations with regard to the organisms of the Holy See*

Lay associations, depend on the local ordinary and, if applicable, their own ordinary. In their possible relations with the Holy See lay associations are in principle also subordinate to the Pontifical Council for the Laity (cf. *PB* 133–134), although there may be other subordinations (e.g. the Secretary of State, or the Pontifical Council for the Family). There are some lay associations founded and directed by institutes of consecrated

13. *EN* 70. To understand properly the mission of the faithful living in the world, also cf. *LG* 11–12, 31–36; *GS* 36, 42–43; *AA* 16–19; *CL* 42–44.

life. These associations, receiving the name of third orders, as well as other associations that intend to be institutes of consecrated life (cf. cc. 303, 311, and 677 § 2), are uniquely responsible to the Pontifical Council for the Laity as regards their apostolic activities; and as for the rest, they are responsible to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life (cf. *PB* 111 and 134).

328 **Qui praesunt consociationibus laicorum, iis etiam quae vi privilegii apostolici erectae sunt, curent ut suae cum aliis christifidelium consociationibus, ubi id expediat, cooperentur, utque variis operibus christianis, praesertim in eodem territorio exsistentibus, libenter auxilio sint.**

Those who head lay associations, even those established by apostolic privilege, are to ensure that their associations cooperate with other associations of Christ's faithful, where this is expedient. They are to give their help freely to various christian works, especially those in the same territory.

SOURCES: Pius PP. XII, Alloc., 12 oct. 1952; Pius PP. XII, Alloc., 11 ian. 1953

CROSS REFERENCES: cc. 311, 323 §2, 394 §1, 529 §2

COMMENTARY

José A. Fuentes

The provisions of this canon refer to a principle affecting all types of ecclesial initiatives. All ecclesiastical activities, regardless of who fosters them, must be in cooperation with other Christian works throughout the world, due to the universal scope of the Church, and, especially with those in the same territory. Vatican Council II recommends cooperation among the diverse associations, and generally between projects organized and headed by the laity, and indicates that, in some cases, cooperation may be imperative (cf. *AA* 27). Moreover, the Council suggests that boards be created in the dioceses to "take care of the mutual coordinating of the various lay associations and undertakings, the autonomy and particular nature of each remaining untouched" (*AA* 26). With respect to proper autonomy and independence, specific laws will determine the ways in which this cooperation is achieved.

As for lay associations, John Paul II summarizes how general cooperation of the faithful should be understood, "within diversity, a concern for unity must always be maintained, avoiding rivalry, tension, monopolistic tendencies in the apostolate or tendencies toward predominance, which the Gospel itself excludes. There should always be a fostering of

the spirit of participation and communion among the different associations in order to truly contribute to the spreading of the Gospel message."[1]

The duty to cooperate is formulated in the canon as a responsibility, a duty, for those heading lay associations. This duty is complemented by the general duty of the pastors to foster and coordinate initiatives, while respecting the proper character of each (cf. cc. 301, 305, 394 §1, 529 §2).

Coordination by associations is promoted by dialogue between the faithful of the various institutions, and in particular, dialogue between each association and the authority. On the part of the hierarchy, coordination is also fostered when the ecclesiastical authority seeks to promote the activities proper to each, to render pastoral services to the various initiatives, to respect the proper charism of each, and to open ecclesial structures to every association. Diocesan councils may be particularly useful (cf. c. 511ff). These councils must truly reflect the diversity of the diocese, and the apostolate conducted by individuals as well as by associations (cf. c. 512).

On the part of associations, coordination is promoted though esteem and respect for the initiatives of other associations and, in general, ecclesial initiatives, assuming the needs and judgments of pastoral action, and through participation in the channels for cooperation. According to the Roman Pontiff, "monopolies" and "predominance" are in direct conflict with cooperation.

1. JOHN PAUL II, *Audiencia general*, March 23, 1994, no. 4 in *Palabra* (*Documentos Palabra*) III (1994), no. 36 (English edition: "Lay Groups Promote Church's Mission," in *L'Osservatore Romano*, Weekly Edition, March 30, 1994, p. 11).

329 **Moderatores consociationum laicorum curent, utsodales consociationis ad apostolatum laicis proprium exercendum debite efformentur.**

Moderators of lay associations are to ensure that the members receive due formation, so that they may carry out the apostolate which is proper to the laity.

SOURCES: *IM* 15; *LG* 35; *AA* 4, 28–32; *DH* 14; *AG* 26; *GS* 43, 72

CROSS REFERENCES: cc. 213, 217, 227, 229

COMMENTARY

José A. Fuentes

1. *The duty of those who govern lay associations is to impart the necessary formation*

This canon sets forth a general principle intended to safeguard and confirm the characteristics of lay activity. Within associations, the duties and fundamental rights must be established with respect to formation (cf. c. 217), while preserving the freedom of each of the faithful to choose the tools for formation. This provision protects this right-duty, indicating that those who govern associations are obligated to organize this formation.

The formation in question in this canon is not the same as the formation envisioned in c. 231 § 1, which is the formation necessary for laypersons who temporarily or permanently devote themselves to a special service in the Church (for example, that needed by professionals who are planning to join missionary work). Canon 329, unlike c. 231 § 1, discusses lay formation in general, which lay associations can and should communicate. The Council indicated that lay formation begins with early education, and is completed during the course of one's life through various means. Among them, associations "Frequently … are the ordinary channel of adequate apostolic training; doctrinal, spiritual and practical" (*AA* 30).

Together with the relationships between association members and those governing the association, certain aspects of this formation should be taken into account, which are not considered in the canon, but which have legal relevance and are often determined in the statutes. Among these aspects, the following are particularly relevant: the obligation and freedom of association members in relation to formation, and the aims and fundamental characteristics of said formation.

Each member of the faithful is responsible for his own formation (*CL* 64), enjoys complete freedom to be educated, and is allowed to select from among the various formational tools manifested in full communion. However, the laity, when choosing one or more associations, temper their freedom in a certain sense. Although they are and continue to be free to educate themselves by any legitimate means, they are committed by their connection with an association to fulfill the formative obligations established in the association statutes. In turn, they may require that the association, and those governing it, design its structures to comply with whatever formative responsibilities have been established. Thus c. 329, by expressly stating that those governing associations have the duty to ensure said formation, confirms that whoever is responsible for an association may be urged to perform this duty, according to the statutes, by their authority and with the faithful constituting the association.

2. *Purpose and fundamental characteristics of the formation which lay associations impart*

Formation imparted to the laity "should be pursued in such a way as to take into account the entire range of the lay apostolate, an apostolate that is to be exercised in all circumstances and in every sector of life-in the professional and social sectors especially-and not confined within the precincts of the associations" (*AA* 30). Therefore, formation must be established relative to the purpose of the laity, of the ordinary faithful immersed in the realities of everyday life. This purpose is none other than to transform the world. As indicated in the text of the Council cited above, it is a question of formation not only for the activities of the group, or of the association, but rather of formation for the Christianization of the world, or as the canon states, to "carry out the apostolate which is proper to the laity." "The fundamental objective of the formation of the lay faithful is an ever clearer discovery of one's vocation and the ever greater willingness to live it so as to fulfil one's mission" (*CL* 58).

The formation that the laity must receive, in associations or by any other means, cannot be understood as something that is merely incidental or limited in purpose. It must strive to be the maximum possible, because that is what is required by the sanctity to which the faithful are called, and because their mission in the Church and the world is not secondary in nature.[1] All of the faithful have a vocation to follow Christ in a radical way. This all-inclusive vocation must affect the various dimensions of lay formation: human, spiritual, doctrinal, and apostolic formation (cf. *AA* 29; *CL* 60), which must be imbued with secular meaning. "In this way the lay-

1. Cf. J. HERVADA, "Misión laical y formación," in *Vetera et nova. Cuestiones de Derecho canónico y afines (1958–1991)*, t. 2 (Pamplona 1991), p. 1282.

man actively inserts himself deep into the very reality of the temporal order and takes his part competently in the work of the world. At the same time, as a living member and witness of the Church, he brings its presence and its action into the heart of the temporal sphere" (*AA* 29). The contemporary canonist, Hervada, has explained in great detail the qualities that this lay formation must possess. He indicates that this secular sense, this lay mentality, is opposed to infiltrated, alienated, or escapist attitudes, which cannot be held by the laity under any circumstances.[2] Naturally, those attitudes cannot be allowed in lay associations either. The laity, and lay associations, have their own place in the world. They do not go to the world, but they are sent to be of the world—and not by the hierarchy, but by Christ himself (cf. Jn 17:18)—in order to convert it and reestablish all things in Christ (cf. Eph 1:10).

If the aim that everyone must have when forming the laity is to realize their duty in the world, then in each of the laity this can only be achieved through the unity of life (as discussed in c. 327), which "postulates a unitary formation that helps the faithful to live in sanctity, fulfilling their mission as active members of the Church, without separating their interior life from the ecclesiastical mission, inasmuch as both make demands on each other."[3] Recent magisterial statements have ordered that lay formation "must be formed according to the *union* which exists from their being *members of the Church and citizens of human society*" (*CL* 59). "One of the gravest errors of our time is the dichotomy between the faith which many profess and the practice of their daily lives" (*GS* 43; cf. *AA* 20–21 and *CL* 59).

John Paul II, in his *Christifideles laici* Post Synod Apostolic Exhortation, has expounded on the place, means, and persons called to assume the integral and unitary formation of the lay faithful (cf. especially no. 61).

2. Cf. J. HERVADA, "Misión laical y formación," in *Vetera et nova. Cuestiones de Derecho canónico y afines (1958–1991)*, t. 2 (Pamplona 1991), p. 1282.
3. Cf. J. HERVADA, "Misión laical y formación," in *Vetera et nova. Cuestiones de Derecho canónico y afines (1958–1991)*, t. 2 (Pamplona 1991), p. 1282.

PARS II
De Ecclesiae constitutione hierarchica

SECTIO I
De suprema Ecclesiae auctoritate

SECTIO II
De Ecclesiis particularibus deque earundem coetibus

PART II
The Hierarchical Constitution of the Church

SECTION I
The Supreme Authority of the Church

SECTION II
Particular churches and Their Groupings

INTRODUCTION

Eduardo Molano

1. *Communal and hierarchical elements in the constitution of the Church: The* communio fidelium *and the* communio hierarchica

The title of this part of book II of the Code is literally the same as the title of chapter III of *Lumen gentium*. As in the Council Constitution, so in the Code, the systematic discussion of the material is included in the book on the people of God. Given the relationship between the Code and the Council, the reasons justifying this system in each case are very similar.

In fact, the *communio hierarchica* is only one of the elements in the section on the people of God; the hierarchical constitution does not actually cover all aspects of the constitution of the Church. Therefore, it is appropriate for part II of book II to be preceded by part I, on Christ's faithful,

which is the other aspect of the constitution of the Church. This community element—the *communio fidelium*—and the hierarchical element are two complementary aspects of the constitution of the Church and, although they are also inseparable, it seems appropriate for them to be distinguished in the systematic ordering of the Code. The part now under discussion, then, only refers to one aspect of the constitution of the Church (i.e., the hierarchical structure), and therefore does not include all of canonical constitutional law.

On the other hand, although the hierarchy is only one of the elements of the constitution of the whole Church as such, the constitution cannot be conceived of without this hierarchy of divine institution. Hence, the entire constitution of the Church is the result of the organic distinction between the community element, which is expressed in the *communio fidelium*, and the hierarchical element, which is manifested in the *communio hierarchica*. Both elements always appear interwoven and interrelated in the whole structure of the Church.

There is, then, a difficulty in distinguishing these two elements accurately in a potential systematic ordering of the Code by subject. This ordering means that part II of book II certainly contains the most important elements and structures of the hierarchical constitution of the Church, especially those structures that are of divine institution; however, there are also hierarchical elements and structures that are regulated in other places in the Code (for example, in the subjects of the power of governance or of the ecclesiastical office, as regulated in titles VIII and IX of book I). The same can be said regarding the issue of incardination of the clergy or the issue of personal prelatures regulated in titles III and IV of part I of book II.

The Church is the people of God, which is constituted as the body of Christ. Canon 204, which introduces book II of the Code, accurately states this fact when it affirms that Christ's faithful are incorporated into Christ through baptism—they become members of the mystical body of Christ—and are integrated into the people of God. In their own way, they become participants in the priestly, prophetic, and royal office of Christ, each according to his own situation. Therefore, the Church, as regards the body of Christ, has an organic structure separated into various offices, by virtue of which some fill the offices requiring the full care of souls—characteristic of the head—and others the offices which do not require the full care of souls—characteristic of the members.

It is the responsibility of the hierarchy to fill these principle offices, for which some of the faithful are qualified through the sacrament of holy orders. This qualification is stated in canon 1008: "By divine institution some among Christ's faithful are, through the sacrament of order ... thus constituted sacred ministers ... [T]hey fulfill, in the person of Christ the Head, the offices of teaching, sanctifying and ruling ..." Among the sacred ministers authorized by the sacrament of holy orders, special mention

should be made of the bishops who, by divine institution, succeed the apostles and who "are constituted Pastors in the Church to be the teachers of doctrine, the priests of sacred worship, and ministers of governance" (c. 375 § 1).

The Church thus appears as a hierarchical communion between the head and the members, "the meaning of which is not that of a vague affiliation, but that of an organizational reality, that requires a legal structure, and that, in turn, is animated by charity" (*pen* 2°). This connection between the community and hierarchical elements and the legal element is manifested in all structures of the hierarchical constitution of the Church in part II of book I.

2. *The communio ecclesiarum*

The *communio ecclesiarum* also can be divided into universal and individual dimensions. In fact, "the Church of Christ, which we profess in the Creed to be one, holy, catholic and apostolic, is the universal Church. It is the worldwide community of the disciples of the Lord, which is present and active amid the particular characteristics and diversity of persons, groups, times, and places. Among these manifold particular expressions of the saving presence of the one Church of Christ, there are to be found, from the time of the Apostles on, those entities that are in themselves churches because, although they are particular, the universal Church becomes present in them with all its essential elements. They are therefore constituted "'after the model of the universal Church,' and each of them is 'a portion of the People of God entrusted to a bishop to be guided by him with the assistance of his clergy.'"

"The universal Church is therefore the Body of the Churches. Hence it is possible to apply the concept of communion in analogous fashion to the union existing among particular churches, and to see the universal Church as a Communion of Churches."[1]

The two sections in part II of book I now under discussion are dedicated to that double dimension, the universal (section I: "The Supreme Authority of the Church") and the individual (section II: "Particular churches and their Groupings") dimensions of the Church. These two dimensions are also mutually related and inseparable because the particular churches, insofar as they are "part of the one Church of Christ," have a particular "mutual inner relationship" with the whole that is the universal Church. "The one, holy, catholic, and apostolic Church of Christ is truly present and active" in each particular church. For this reason, "the universal Church cannot be conceived as the sum of the particular churches, or as a

1. Cf. CDF, *Communionis notio*, nos. 7–8.

federation of particular churches." It is not the result of the communion of the churches, but, in its essential mystery, it is a reality *ontologically and temporally* prior to every *individual* particular church.

The different local churches have arisen from the universal Church as particular expressions of the one unique Church of Jesus Christ. Arising within and out of the universal Church, they have their ecclesiality in it and from it. Hence, the formula of the Second Vatican Council—the Church in and formed out of the churches (*Ecclesia in et ex Ecclesiis*)—is inseparable from this other formula: the churches in and formed out of the Church (*Ecclesiae in et ex Ecclesia*). Clearly the relationship between the universal Church and the particular churches is a mystery and cannot be compared to that which exists between the whole and the parts in a purely human group or society.[2]

The unity and mutual involvement between the universal Church and the particular churches, in addition to faith and baptism, is based above all on the Eucharist and on the episcopacy. In turn, the unity of the episcopacy also claims a principle of unity, the visible foundation of which is the Roman Pontiff. As the very idea of the *body of the churches* calls for the existence of a Church that is head of the Churches (i.e., the Church of Rome), so, too, the unity of the Episcopate entails the existence of a bishop who is head of the *Body* or *College of Bishops*, namely the Roman Pontiff. Of the unity of the episcopate, and also of the unity of the entire Church, "the Roman Pontiff, as the successor of Peter, is a perpetual and visible source and foundation."[3]

The primacy of the bishop of Rome and the College of Bishops is not, therefore, extrinsic to a particular church, whose existence is the result of a voluntary submission of a federation of particular churches to a universal authority, but rather is intrinsic to the very existence of the particular churches because they are churches as such. Thus, for each particular church to be fully part of the Church; that is, to posses the particular presence of the universal Church with all its essential elements and constituted after the model of the universal Church, there must be present in it, as a proper element, the supreme authority of the Church—the Episcopal College "together with their head, the Supreme Pontiff, and never apart from him." The primacy of the bishop of Rome and the episcopal College is the proper element of the universal Church that is "not derived from the particularity of the Churches," but is nevertheless interior to each particular church.[4]

2. Ibid., no. 9.
3. Ibid., no. 12.
4. Ibid., no. 14.

3. *Different systematic criteria in the two sections of part II of book II*

The systematic division of part II of book II corresponds to the distinction between the universal Church and particular churches, which we have just discussed.

Section I discusses the supreme authority of the Church, and section II discusses the particular churches and their groupings; however, a parallel systematic treatment has not been followed in both sections. While section I discusses only the supreme authority of the Church and considers only the hierarchical aspect of the universal *communio fidelium*, section II has followed a more complete and inclusive focus, taking into account all elements of *communio* and not exclusively the hierarchical aspect.

Thus, title I of section II is quite significant in expressing this distinction: "Particular churches and the Authority Constituted Within Them." Within title I, chapter I is dedicated to the particular churches as portions of the people of God, using the *communio fidelium* as a basis. Only later in chapter II are bishops specifically discussed as the persons who normally govern the particular churches and always govern dioceses. Therefore, in section II, the particular churches are considered in their communal aspect—*communio fidelium* or *portio populi Dei*—as well as in their hierarchical aspect as containing both offices requiring the full care of souls and those that do not.

For there to be a systematic parallelism between sections I and II, section I would have had to be entitled something like "The Universal Church and the Supreme Authority Constituted Therein." With this wording, perhaps the key ecclesiological concept of Vatican II would have been more heavily stressed, placing *communio*, with all its essential elements, in the center of the systematic treatment on the Church and its structures. The Roman Pontiff and the College of Bishops, as the supreme authority of the Church, would have appeared as a hierarchical central element of the universal *communio fidelium*. This structure would have allowed certain hierarchical structures of the universal Church to be included in section I. As it stands, these hierarchical structures, due to the systematic anomaly to which we have referred previously, would have to be outside of part II of book II. This organization is the case with personal prelatures, which are situated in part I.

This lack of systematic parallelism can probably be found in a desire for normative economy and to avoid useless repetition. In fact, all of part I of book II entails a discussion of the universal *communio fidelium*under the title "Christ's Faithful." Part I of book II includes the community element of the universal Church, on the basis of which the supreme authority of the Church is discussed in section I of part II.

A very clear indication of what we mean can be found in canon 204, which introduces part I of book II. This canon is divided into two paragraphs that set forth, respectively, the community and hierarchical elements of the universal Church. These paragraphs, with a few variations to adapt their content, could very well have introduced part II of book II. Section I discusses Christ's faithful and their incorporation into the people of God as the universal *communio fidelium*, and section II refers to the hierarchical aspect of the universal Church, "established and ordered in this world as a society ... governed by the successor of Peter and the bishops in communion with him."

Beginning with canon 204, all of part I of book II is nothing more than a normative development of the universal *communio fidelium*, making reference not only to legal statutes common to the faithful, but also to the specific statutes of laypersons and the clergy, which include personal prelatures and associations of the faithful in the last two titles.

Because personal prelatures are hierarchical structures of the universal Church established by apostolic authority for certain pastoral duties, they could have been systematically included in section I of part II if the hierarchical structures of the universal Church rooted in the Petrine ministry, and not only of the supreme authority of the Church, were discussed. In the absence of this systematic approach in section I, personal prelatures have been included in part I as institutions of the universal Church, with a discussion of community and hierarchical elements under the governance of a prelate who functions in office as its proper pastor.

This organizational approach demonstrates how difficult it is to fit perfectly together all the pieces in the systematic options taken, and how at times some aspects have to prevail over others when all the criteria are coordinated. The system adopted regarding the subjects regulated in parts I and II of book II particularly emphasize the difficulty in systematically distinguishing the different aspects in which *communio* is structured as *communio fidelium*, *communio hierarchica*, and *communio ecclesiarum*. These aspects are so interwoven that inevitably some institutions and structures may appear in one place or another according to the prevailing systematic criteria or according to the aspect that takes precedence. Therefore, the significance of the systematic options of the Code should not be overly stressed, in that they are of necessity relative or even just listed as conventions in many cases.

4. *The territorial criterion as a general rule in the determination of ecclesiastical structures*

Lastly, it can also be noted that the hierarchical structures that appear in section II of part II reflect above all an entire division of the hierarchical constitution of the Church based on territorial criteria. This is what

occurs with respect to the various types of particular churches described in title I (diocese, territorial prelatures, territorial abbeys, apostolic vicariates, and apostolic administrations erected in a stable manner), as well as with respect to the groupings of particular churches included in title II (ecclesiastical provinces and regions, and the different authorities and groupings constituted therein, as metropolitans, particular councils and bishops' conferences).

Obviously, territorial criteria are not unique or essential in the division of the hierarchical structures of the Church but they are considered as the most normal criteria and the general rule (it is manifested thus, for example, in c. 372 § 1 with regard to the diocese or other particular churches).

The same can be said in connection with the structures considered in the internal ordering of the particular churches referred to in title III of section II. Using the diocese as a model, and after discussing the assemblies and organizations constituted therein (such as the diocesan synod, the diocesan curia and its various offices, the presbyteral council and the college of consultors, the chapter of canons, and the pastoral council), the various parts into which the diocese is divided are discussed, and then parishes and the vicars forane are considered, with the last chapter dedicated to other public churches and chaplains.

With respect to these structures, the territorial division criteria may be more flexible and, if they refer to smaller groups of people, may be more easily adapted to the circumstances. This adaptation occurs, for example, in the case of parishes. According to the provisions of canon 518: "Where it is useful, however, personal parishes are to be established, determined by reason of the rite, language or nationality of Christ's faithful of a certain territory, or on some other basis."

SECTIO I
De suprema Ecclesiae auctoritate

SECTION I
The Supreme Authority of the Church

INTRODUCTION
Eduardo Molano

1. *The connection between this section and other parts or sections of the Code*

As we have already stated in the introduction to part II of book II on the hierarchical constitution of the Church, section I discusses the constituted authority in the universal Church. Only here is the supreme nature of the hierarchical element discussed, and it has not been deemed necessary to preface it with any introductory canon in which reference is made to another element of the Church, the universal *communio fidelium*. As has already been indicated in the introduction, all of part I of book II is dedicated to that subject. Section II of part II assumes, therefore, that the universal *communio fidelium* has already been discussed, so that now only the supreme authority constituted therein needs to be covered. The systematic divisions of the Code should not lead us to forget that there is an obvious connection between section I of part II and all of part I of book II.

On the other hand, if we consider that the Church is structured organically as a *communio ecclesiarum*, and that the supreme authority of the universal Church is also an intrinsic element present in each and every particular church, there is also an obvious connection between section I and section II of part II of book II. The supreme hierarchical element of the universal Church rests on a substratum that may be considered either in connection with the universal *communio fidelium* (part I of book II) or in connection with the *communio ecclesiarum* (section II of part II of book II). In either case, the supreme hierarchical element is a necessary intrinsic requirement of the *communio ecclesiastica*. Its systematic isolation in section I of part II is only the result of the principle of legislative economy, and not because it can really be isolated.

2. *The subject or subjects of the supreme power of the Church*

The set of canons (cc. 330–367) regulating this section are divided into five chapters, of which chapter I, dedicated to the Roman Pontiff and the College of Bishops, is undoubtedly the most important. The other four—dedicated to the Synod of Bishops, the cardinals of the Holy Roman Church, the Roman Curia, and papal legates, respectively—discuss the main organizations and institutions that collaborate in the government of the universal Church. In these canons the subjects of supreme ecclesiastical power are discussed, whether they are of divine institution—Roman Pontiff and the College of Bishops—or of mere ecclesiastical law, to the extent that they share in that power. In this introduction, we will focus specifically on the subject or subjects of divine institution.

When we speak of the supreme authority of the Church, we are referring to that power of the Church that is not subordinate to any other and to which all other ecclesiastical power is subordinate; that is, the power that is the highest in its own order. A discussion of this topic also entails a discussion of power in general, which is considered primarily in title VIII of book I.

To answer the question regarding the subjects of supreme power, it is necessary to take into account other matters that depend on this power, such as the nature and origin of the power (the role of the sacrament of orders and the canonical mission), the separation or division of powers (the *sacra potestas* and its relationship with the power of orders and the power of jurisdiction), the various functions of power (be it the question of the threefold *munus—sanctificandi, docend,* and *regendi* of *sacra potestas*—or of the various functions of the power of jurisdiction in a strict sense—legislative, executive and judicial), the various spheres in which power is exercised (universal Church or particular churches), and the various means of its exercise (personal or collegial, etc.).

Considering all that has been discussed (see the respective commentaries on the subject of power in general), we are still going to limit ourselves, as already mentioned, to the matter of the subject or subjects of the supreme authority of the Church.

The matter has already been suggested in the title of chapter I of this section: "The Roman Pontiff and the College of Bishops," as well as in the two articles into which this chapter is divided, dedicated respectively to the Roman Pontiff (art. 1) and the College of Bishops (art. 2). A classic theme of canonical and theological literature is raised here, one that has been discussed most recently in the Second Vatican Council. From the perspective of the magisterium of the Church, Vatican I was only able to discuss the Roman Pontiff and the petrine office, while Vatican II was able to complete the discussion by clarifying doctrine regarding the College of Bishops. The canons of the Code on this issue (cc. 330–341) attempt to re-

flect the conciliar teaching, and many of their statements agree verbatim with it. In this case in particular, the documents of the Council are the key to interpreting the meaning of these canons. We must also remember that almost all of them were taken from the draft of the *Fundamental Law of the Church*, which was not promulgated.[1]

Taking into account that the Council does not try to settle pending theological or canonical questions, it is worth establishing the identity of the subject or subjects of the supreme power of the Church. The classic and current answer may be summed up in three theses, each having different nuances that could give rise to other more or less acceptable subdivisions: a) the subject of the supreme authority of the Church is the Roman Pontiff; b) the subject of supreme authority is the College of Bishops; or c) there are two subjects of supreme authority in the Church: the Roman Pontiff and the College of Bishops, but they are two inadequately distinct subjects. We will now examine each thesis separately.

a) *The subject of the supreme authority of the Church is the Roman Pontiff*

This is a classic position, defended in the modern era by authors such as Cayetano and other post-Tridentine theologians and canonical experts, and more recently, until Vatican II, by authors such as Staffa, Gutierrez, and Lattanzi.[2] This thesis is indebted to other classic approaches on the origin and nature of the power of jurisdiction in the Church that have recently suffered a crisis. I am referring to the approach by which all jurisdiction of the Church descends vertically from the Roman Pontiff through a predominantly legal channel—canonical mission, and in which the sacramental origin of the power is relegated to a second level, if it is even admitted.

In this approach, the jurisdiction of bishops, although their divine origin is admitted, would be transmitted directly by the Roman Pontiff through canonical mission, maintaining that origin of divine institution only indirectly. Thus, those sharing this thesis have also maintained, at least until Vatican II, that only the so-called diocesan bishops had that jurisdiction and, therefore, only they had the right to participate in an ecumenical council. According to these authors, an ecumenical council also shared that power of the pope when the bishops were called to the ecumenical assembly and by virtue of the jurisdiction (of direct pontifical ori-

1. Regarding the concept of the Fundamental Law of the Church, see D. CENALMOR, *La Ley Fundamental de la Iglesia. Historia y análisis de un proyecto legislativo* (Pamplona 1991).

2. Cf. D. STAFFA, "De collegiali episcopatus ratione," in *Monitor ecclesiasticus* 89 (1964), pp. 205–263; A. GUTIÉRREZ, "Collegium episcopale tamquam subiectum plenae et supremae potestatis in universam Ecclesiam," in *Divinitas* 9 (1965), pp. 421–446; and U. LATTANZI, "Episcopalis Collegii ad Papam relatio," in *Acta congressus internationalis de theologia Concilii vaticani II* (Rome 1968), pp. 136–145.

gin and only indirectly through divine origin) that those diocesan bishops already had in their respective dioceses or *ecclesiastical districts*.

Presently, and post-Vatican II, it becomes very difficult to defend this thesis unless many nuances are added. According to the Council, the pope as well as the College of Bishops, with and under the pope, are subjects of full and supreme power in the Church. In order to save the present viability of this classic thesis, one of its supporters has argued that the subject of the supreme power of the Church can only be one, and that is the Roman Pontiff, at least in its proper and absolute sense or in the main and original meaning. The College of Bishops is also this subject when the pope transmits that power to it and gives it a share in this power, but it is only this subject in a relative and participatory sense, or in a secondary, incidental, and contingent sense.

b) *The subject of the supreme power of the Church is the episcopal college*

Leaving aside the expressions of conciliar movements employing this line of reasoning, this thesis has, in recent times, been defended by writers trying to make it compatible with the teaching of Vatican II. During the time of the Council, it was defended by such authors as Rahner and Jimenez Urresti and later by others such as Congar.[3] It is still defended at present by dogmatic theologians and by some canonists.

According to this thesis, the only subject of the supreme power of the Church is the College of Bishops, always with the pope and under the pope. But the exercise of the power is manifested in two ways: a) personally by the pope, by virtue of his office of head of the College and b) collegially by the entire body of bishops, with and under its head. In the first case, the exercise of power is concentrated entirely in the head of the College, the pope. He would act, therefore, as the head of the College and even as a representative of the College, although not as its delegate, because his power is not received from the other members of the College. The pope's role would encompass a corporeal representation in the biblical sense; for example, in the way that Adam represents sinful humanity and Christ the Church, the new people who have been redeemed.The pope would not be bound by a mandate from the other members of the College. All in all, the pope, although he always acts as the head of the College and in communion with its members, would also always maintain his freedom to act in exercising his power. As the head, he would also have competence to choose one method or another in exercising it—be it personal or collegial.

3. Cf. K.RAHNER and J.RATZINGER, *Episcopado y Primado* (Barcelona 1965); T. JIMÉNEZ URRESTI, *El binomio "Primado-Episcopado"* (Bilbao 1962); and Y.M. CONGAR, "Sínodo, primato, e collegialità episcopale," in V. FAGIOLO and G. CONCETTI, eds., *La collegialità episcopale per il futuro della Chiesa* (Florence 1969), pp. 44–61.

Supporters of this thesis try to take to extremes the doctrine of collegiality of the bishops, but also try to respect the primacy of the Roman Pontiff. Given that the College of Bishops exists always and as an element essential to the constitution of the Church—although it does not act with strictly collegial acts, but only at intervals and when it is called by its head—there may be other modes of collegial action in the full sense that the head of the College has to implement or promote. In fact, the personal exercise of power by the head is never an exercise isolated from the other members of the College; the pope must act in communion with them, and many times that communion is also manifested in different methods of collegial functioning or collegiality in its fullest sense. Supporters of this thesis also put forward ecumenical motives that would facilitate acceptance of the petrine ministry by some of the separate churches.

c) *There are two inadequately distinct subjects of the supreme power of the Church: the Roman Pontiff and the Episcopal College*

This thesis was already defended during Vatican I and has again been defended during Vatican II and at present. The Council itself has used some expressions that seem to support this thesis.

In fact, the Council affirms that "in virtue of his office ... the Roman Pontiff has full, supreme and universal power over the Church" and adds that "the order of bishops ... is also the subject of supreme and full power over the universal Church, provided we understand this body together with its head the Roman Pontiff and never without this head."[4] The Roman Pontiff on the one hand and the College on the other are also the subject (*subiectum quoque*) of the supreme power over the Church. Although these expressions can serve to base this thesis on the texts of the Councils, we have already stated that it is not the mission of the Council to settle doctrinal disputes between theologians and canonists, but that canonists must make an effort to develop their own arguments as they reason their positions.

Among canonists, notable authors such as Mörsdorf and Bertrams have defended this thesis.[5] For these authors, it is a matter of reconciling two things that may seem contradictory. On the one hand, the principle is that in a society, there may only be one supreme power, because if there were more than one, one of them would limit the other and it would no longer be supreme. On the other hand, the texts of the magisterium affirm the existence of two subjects of supreme power, the Roman Pontiff and the College of Bishops. In order to reconcile all of this information, according to these authors, it is necessary to affirm the duality of subjects

4. *LG* 22b.

5. Cf. K. MÖRSDORF, "Die hierarchische Verfassung der Kirche, insbesondere der Episkopat," in *Archiv für katholisches Kirchenrecht* 134 (1965), pp. 88–97; W. BERTRAMS, *Il potere pastorale del papa e del Collegio dei vescovi: premesse e conclusioni teologico-giuridiche* (Rome 1967).

and, at the same time, establish an inadequate distinction between them, because the Roman Pontiff is present in both subjects of power, whether as the Vicar of Christ and pastor of the universal Church, or as the head of the College of Bishops. It must also be kept in mind that, as the Council makes very clear, in both cases the Roman Pontiff always retains the freedom to act in exercise of that full and supreme power.

3. *Primacy and collegiality in the governance of the universal Church*

Each of these theses, with their particular nuances that sometimes depend on the author expressing them, attempts to offer a speculative explanation of the question concerning the subject of the supreme power of the Church.[6] Each of them tries to underline and stress certain aspects of the constitution of the governance in the Church. Therefore, while thesis a) tries to defend and guarantee to the maximum the institution and the rights of the primacy, thesis b) above all seeks to empower the College of Bishops with and under the pope, and thesis c) seeks to find a balance between the affirmation of both subjects and the necessary reduction to unity in the exercise of power. To the extent that they respect the realities of revelation and of the magisterium, they may be accepted as explanations of realities which, going to the roots of the mystery of the Church, resist easy simplification and systematization.

The Code takes no position in this matter, nor does it have the duty to do so. Therefore, the attempt to find support for one thesis or another in given statements or systematic options seems futile. For example, supporters of the collegial subject could see justification for their thesis in the systematic option that has grouped all the material under the chapter "The Roman Pontiff and the College of Bishops," including just one preliminary common canon (c. 330), before the division into two articles. This canon is dedicated to establishing and stressing the relationship between the Apostolic College and the College of Bishops. On the other hand, supporters of the two-subject thesis could claim that the presence of two articles to discuss the Roman Pontiff and the College of Bishops separately confirms a systematic option in favor of their thesis. The Code probably is not attempting to take the side of any one thesis in this area.

Using these many varied sources, almost all of which are taken from the 1917 Code or from texts of Vatican II, and many of which were received through canons of the draft of the Fundamental Law that was not

6. An analytic exposition on the principal authors and doctrinal positions concerning the problems created by episcopal collegiality in its relations with the primate, followed by a comparative and critical view, can be seen in G. MAZZONI, *La collegialità episcopale: tra teologia e diritto canonico* (Bologna 1986).

promulgated but was later put into the present Code, the Code has dedicated a chapter of twelve canons to this important subject of the Roman Pontiff and of the College of Bishops. The Code also has dedicated the four following chapters of section I to the principal institutions or persons that collaborate with the pope in the universal government of the Church. Leaving aside canon 330, which begins this first chapter, five canons (cc. 331–335) regulate the office of the pope, and six canons (cc. 336–341) regulate the College of Bishops. Thus, a balance is achieved that seems intentional. As for the rest, only essential matters are regulated, while providing for legislation outside of the Code for discussions of more specific matters, such as those regarding a vacancy in the Apostolic See, for which the Code itself has provided certain special rules (cf. c. 335).

The canons of the Code leave many possibilities open for the exercise of the action of governance in the sphere of the universal Church. The style of governance in the Church cannot follow rigid formulas, and it will be up to the members of the supreme bodies (certain individuals, undoubtedly endowed with certain charisma, together with their personal qualities) to apply at each moment and in each historical circumstance the most appropriate style for the situation. For this discernment, they also have the aid of the Holy Spirit.

Aside from these distinctions of power, the lines between personal and collegial governance are very fluid. On the one hand, the personal governance of the pope must always be in communion with the episcopate and the rest of the Church. On the other hand, collegial governance allows extremely ample methods that cannot be reduced to that which strictly collegial acts may bring about, such as an ecumenical council. Most acts of pontifical governance, at least the most important ones, are more or less broad expressions of that collegiality that was rediscovered and encouraged by the last council. The personal exercise of governance by the pope when he acts by virtue of his office as the Vicar of Christ has frequent recourse to a collaboration with persons and institutions that are a manifestation of a certain collegiality. This is precisely what happens with the persons and institutions regulated in chapters II–V of this section I. The collaboration that some institutions, such as the Synod of Bishops or the Roman Curia, render to the Roman Pontiff as the head of the Church is an example of the fact that it will not always be easy to distinguish between personal exercise and collegial exercise of governance.

CAPUT I
De Romano Pontifice deque Collegio Episcoporum

CHAPTER I
The Roman Pontiff and the College of Bishops

330 **Sicut, statuente Domino, sanctus Petrus et ceteri Apostoli unum Collegium constituunt, pari ratione Romanus Pontifex, successor Petri, et Episcopi successores Apostolorum, inter se coniunguntur.**

Just as, by the decree of the Lord, Saint Peter and the rest of the Apostles form one College, so for a like reason the Roman Pontiff, the Successor of Peter, and the Bishops, the successors of the Apostles, are united together in one.

SOURCES: *LG* 22, *pen*

CROSS REFERENCES: cc. 333 § 2, 336, 375

COMMENTARY

Eduardo Molano

The Apostolic College and the Episcopal College

This canon was added at the last minute and had not been included in the previous drafts of the Code or in the drafts of the *Fundamental Law of the Church*. It is a verbatim copy of the text of *Lumen gentium* 22, which also begins the discussion of the College of Bishops and its head. Since it is the only canon introducing chapter I, and it precedes the separate discussions of the Roman Pontiff and the College of Bishops in the following two articles, it gives the entire chapter a strong collegial emphasis in keeping with Vatican II.

The canon establishes a relationship of similarity and proportionality between the Apostolic College and the Episcopal College. There has been an intentional attempt to avoid speaking about identity, and only the similarity of the relationship is mentioned (*pari ratione* and not *eadem ratione*, as stated in *pen* 1°).

The expression *statuente Domino* clearly refers to the will of the Lord, and the creation of the Apostolic College refers to divine institution within which Peter and the other apostles belong. Therefore, Peter is also a member of the College, although he is a member with particular qualities who presides over it and is the head. Yet he is also an apostle, and that is why it speaks of the other (*ceteri*) apostles who, together with him, are members of the College. Within the College, the position of Peter is that of the head and that is why he is above the other apostles, but he is not outside of the College.

"The term *College* is not understood in its strictly juridical sense, that is, as an assembly of equals delegating their power to their own president, but rather as a stable assembly whose structure and authority must be inferred from Revelation" (*pen* 1°). For this reason, it is said that the Lord instituted (the apostles) "in the form of a college or permanent assembly, at the head of which he placed Peter, chosen from amongst them" (*LG* 19). Additionally, the terms *body* and *order* are also often used instead of *College* (*pen* 1°). This convention also occurs in canon 336, which discusses the *Corpus Apostolicum* instead of the College.

Vatican II tried to emphasize that the term *College*, although it began to be used when Roman law was in force (for example, by Tertullian, Saint Cyprian, and Saint Leo the Great), it did not mean the same thing when it was applied to the Apostolic College versus the Episcopal College. For example, according to the Roman law concept of *Ulpian*, a college consists of those possessing the same power: "collegarum appellatione hi continentur qui sunt eiusdem potestatis" (*Digesta* 50, 6, 173).

Following the Second Vatican Council, the canon expresses the similar but not identical relationship between the first College (Peter-apostles) and the second (pope-bishops). This parallel does not imply the transmission of the special power of the apostles to their successors, nor equality between the head and its members, but rather only proportionality (*pen* 1°). The singular role that the apostles played as instruments to transmit revelation, or in the promulgation of the sacraments instituted by Christ, or by being the founders of churches, etc., ended with them and did not pass to their successors.

The parallel between Apostolic and Episcopal Colleges is valid for indicating that the pope as well as the bishops are always inside the College and not outside of it; that is, the successor of Peter as well as the successors of the apostles are members of the College. But the successor of Peter is a member as the head, and the other bishops are simply members.

This distinction implies that within the College there is an organic structure of superiority and subordination between the head and the members. The College is always *cum and sub Petro*.

Lastly, we must stress the bond of unity established between the head and the members of the College, *inter se coniunguntur*. The expression immediately suggests a unity based on communion and "collegial affection," which does not always translate into strictly collegial acts, but often does in the full exercise itself. There is an obvious relationship between the expression used by this canon and that of canon 333 § 2: "The Roman Pontiff ... is always joined in full communion with the other bishops ..."[1]

1. For all the canons related to the Roman Pontiff and the Episcopal College, see also Z. GROCHOLEWSKI, "Canoni riguardanti il papa e il concilio ecumenico nel nuovo Codice di diritto canonico," in *Apollinaris* 63 (1990), pp. 571–610.

ART. 1
De Romano Pontifice

ART. 1
The Roman Pontiff

331 **Ecclesiae Romanae Episcopus, in quo permanet munus a Domino singulariter Petro, primo Apostolorum, concessum et successoribus eius transmittendum, Collegii Episcoporum est caput, Vicarius Christi atque universae Ecclesiae his in terris Pastor; qui ideo vi muneris sui suprema, plena, immediata et universali in Ecclesia gaudet ordinaria potestate, quam semper libere exercere valet.**

The office uniquely committed by the Lord to Peter, the first of the Apostles, and to be transmitted to his successors, abides in the Bishop of the Church of Rome. He is the head of the College of Bishops, the Vicar of Christ, and the Pastor of the universal Church here on earth. Consequently, by virtue of his office, he has supreme, full, immediate and universal ordinary power in the Church, and he can always freely exercise this power.

SOURCES: c. 218; Pius PP. XI, Enc. *Ecclesiam Dei*, 12 nov. 1923 (*AAS* 15 [1923] 573–574); Pius PP. XI, Enc. *Mortalium animos*, 6 ian. 1928 (*AAS* 20 [1928] 10); *LG* 18, 20, 22, 23, *pen* 3 et 4; *OE* 3; *UR* 2; *CD* 2

CROSS REFERENCES: cc. 131 §1, 135 §1, 273, 330, 333, 336, 381 §1, 590 §2, 749 §1, 752, 754–756, 782 §1, 1196, 1203, 1273, 1370 §1, 1372, 1404, 1405 §1, 4°, 1417 §1, 1442, 1444 §2, 1629 §1, 1656, 1732, etc.

COMMENTARY

Eduardo Molano

Although canon 330 places the Roman Pontiff within the College, the Code has chosen to systematically divide the subject into two articles and

treat them separately. First, it discusses the Roman Pontiff in article 1 because it is logical to begin with the head of the College.

In essence, canon 331 refers to two matters: 1) the office and the titles proper to the Roman Pontiff; and 2) the power and characteristics belonging to the office of Peter.

1. *The office of Peter*

The canon begins by referring first of all to the pope as the bishop of Rome and the successor of Peter (the latter is implied). Only later does it enumerate the other pontifical titles it wishes to highlight: head of the College of Bishops, Vicar of Christ, and pastor of the universal Church on earth. This structure seems to indicate a logical sequence in which the Roman episcopate appears as the title or capacity on which the rest are based. Thus the episcopal nature is also stressed, which is inherent to the petrine office, as if to anticipate what is going to be said in canon 332, which sets forth the need for episcopal ordination of the Roman Pontiff as a necessary prerequisite for obtaining his power.

In continuity with the statement in canon 330 on the divine institution of the Apostolic College, it is affirmed that the pope is the successor of Peter by the will of the Lord. As Vatican I stated, by the will of the Lord, the office of Peter would have to remain forever and should, therefore, be transmitted to his successors who are the bishops of Rome (Dogmatic Constitution *Pastor aeternus* ch. 2). As both Vatican councils have stated, "it is the original basis, perpetual and visible, for the unity of faith and *communion*" (*LG* 23; cf. *Pastor aeternus*, in Dz.-Sch. 3050).

As the bishop of Rome and the successor of Peter, who is the "first of the Apostles," the pope is also necessarily the head of the Episcopal College, Vicar of Christ, and pastor of the entire Church. In the first place, he must always be the bishop of Rome and, because he is, he becomes the head of the College of Bishops. The need for the pope to belong to the College as a member who is always inside and not outside the College, is once again stressed, even if he is its hierarchical superior because he is the head.

The fact that his status as the head of the College comes prior to that of the Vicar of Christ and the pastor of the Church in the enumeration of the pontifical titles in the canon, it does not imply so much an ontological hierarchy between the titles as a logical sequence in connection with the status of the bishop of Rome. Furthermore, it seems futile to consider which of these titles occupies the primary hierarchical level because each and every one of them belongs to and is inseparable from the condition of the Roman Pontiff.

The office of the Vicar of Christ, which the popes of the Middle era reserved for themselves, does not belong to them exclusively because bishops are also vicars of Christ in their respective dioceses, and their power proceeds directly from God (*LG* 27). In the case of the pope, this title assumes special meaning that is particularly linked to his position as the pastor of the universal Church. That is why doctrine coined the term *vicarious power* to describe pontifical power (for example, the power to dissolve the marriage bond in certain specific cases), because it is in a sense different from how this term is applied to other ecclesiastical offices.

The office of pastor of the universal Church on earth is also very close to the status of Vicar of Christ (eternal pastor [*Pastor Aeternus*] in the terminology of Vatican I). This title also means the episcopal office of the pope as the bishop of the catholic Church (*Ecclesiae catholicae episcopus*) according to the terminology often used by Paul VI (which was used, for example, to promulgate the documents of Vatican II). Vatican I had described pontifical power as "*potestas vere episopalis*," precisely to stress the status of the pope as the pastor of the universal Church with true power of jurisdiction (*Pastor Aeternus* ch. 3). Bishops are also the "proper pastors" of their faithful, but only within the territory of their dioceses (*LG* 27). The fact that *vere episcopalis* is such a clear characteristic of pontifical power by virtue of the papal office and the pope's status as the bishop of Rome and the pastor of the entire Church, that the canon sees no need to include it expressly in the enumeration of the characteristics of pontifical power.

2. *The power of the pope and its properties*

The canon establishes that there is a connection between the *munus petrinum* and the power of the pope (*qui ideo*). We have already noted that the raison d'être of the office of Peter consists of being the origin and basis, perpetual and visible, for the unity of faith and communion in the entire Church. To this end, the pope has been endowed with a power the properties of which are described in the second part of this canon: it is an ordinary, supreme, full, immediate, and universal power in the Church and can always be freely exercised.

a) *Ordinary*

This is a power that the pope possesses by virtue of his office, *vi muneris sui*, and therefore, not as a physical person, but rather as the holder of the highest office of the governance of the universal Church. It is evident that the pope does not exercise this power when acting as a private person or merely as one of the faithful, and that the state of *ordinary* cannot be taken in its common sense meaning—as if the pope continually

exercised his power—but in its technical meaning. It is the power that is attached to the office he possesses in the sense of canon 131 §1.

b) *Supreme*

He is not subordinate to any other human power, be it ecclesiastical or temporal, and therefore enjoys the highest rank in the human order. The consequences of this status of superiority of the pontifical power are found in different canons in the Code; for example, in the classic principle taken by canon 1404: "The First See is judged by no one." The consequence of this principle is that acts and decisions violating this provision cannot be carried out (c. 1406 § 1). In addition, because the Roman Pontiff is the "supreme judge for the whole catholic world" (c. 1442), "there is neither appeal nor recourse against a judgment or a decree of the Roman Pontiff" (c. 333 § 3; see also cc. 1629 1° and 1732). The Code establishes penal sanctions of censure against anyone "who appeals from an act of the Roman Pontiff to an Ecumenical Council or to the College of Bishops" (c. 1372).

This supreme status of papal power is also manifested in connection with other aspects of the activity of the Church, which at times are not strictly juridical. Thus, for example, with regard to the missionary activity of the Church, the pope and the College of Bishops "have the responsibility for the overall direction and coordination of the initiatives and activities which concern missionary work and cooperation" (c. 782 § 1). Moreover, with respect to the patrimony and the ecclesiastical goods, the Roman Pontiff "is the supreme administrator and steward of all ecclesiastical goods" (c. 1273). Likewise, "under the supreme authority of the Roman Pontiff, ownership of goods belongs to that juridic person which has lawfully acquired them" (c. 1256).

c) *Full* (plenitudo potestatis)

This characteristic of power means that the pope possesses all of the power that Christ has given to the Church and, therefore, the power necessary and sufficient to govern the Church in all orders and spheres of the ecclesiastical realm. The fullness of pontifical power includes all the power of orders as well as the power of jurisdiction, and it extends to all the functions of *sacra potestas*: *munus sanctificandi*, *docendi*, and *regendi*. It also extends to all the functions of governance in the strict sense: legislative, executive, and judicial (c. 135 § 1).

The term *full* does not mean that the pope is not subject to any limitations. Because he is at the service of the Church, the ends of the Church itself are what define the scope of his power: "The Roman Pontiff, has been granted by divine institution, full, immediate, and universal power *for the care of souls* ... As pastor of all the faithful his mission is to promote the *common good of the universal Church and the particular good of the churches*" (*CD* 2). Therefore, it is a power to serve the ends of the Church, a power that must respect the constitution and structure of the di-

vinely instituted Church (including faith, the sacraments, and the ecclesiastical system itself, with the existence of the episcopate, of particular churches, the rights of the faithful, etc.).

d) *Immediate*

The pope may exercise his power in relation to each and every one of the faithful and in relation to each and every one of the particular churches without the need for permission, authorization, or license from the respective bishops or ordinaries. As a result of this characteristic, the faithful also have the right to address the pope directly to express their petitions or wishes.

This characteristic of papal power also has many different manifestations in the Code; for example, "any of the faithful may either refer their case to, or introduce it before, the Holy See, whether the case be contentious or penal. At any instance of the trial and no matter the status of the trial at that particular moment" (c. 1417 § 1). On his part, the pope may also reserve any case to himself (c. 1405 § 1,4°) "either *motu proprio* or at the request of the parties" (c. 1444 § 2). This characteristic is also evident in the "special obligation to show reverence and obedience to the Supreme Pontiff and to their own Ordinary" that all members of the clergy have (c. 273). Equally, "individual members [of the institutes of consecrated life] are bound to obey the Holy See as their highest superior, by reason also of their sacred bond of obedience" (c. 590 § 2). The Roman Pontiff may dispense those in the Church from all types of vows and oaths (cc. 1196 and 1203).

It is worth noting that this immediate power of the pope "over all particular churches and their groupings ... reinforces and defends the proper, ordinary and immediate power which the bishops have in the particular churches entrusted to their care" (c. 333 §1), and that "in the diocese entrusted to his care, the diocesan bishop has all the ordinary, proper, and immediate power required for the exercise of his pastoral office, except in those matters which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to some other ecclesiastical authority" (c. 381 § 1).

e) *Universal*

The power of the pope is extended in its exercise to all areas of the Church, be they territories, persons, or matters, provided they fall within the ecclesiastical order. None of these areas is removed from pontifical authority, nor can any of them be reserved by any other authority without the consent of the pope.

f) *That can always be freely exercised*

This last addition to the canon corresponds to an addition made by Vatican II with respect to the remaining characteristics of the power that were already mentioned in Vatican I (*plenam, supremam et universalem*

potestatem). The meaning is clear because if the pope could not always exercise this power freely, it would not be a full and supreme power. The text of *Lumen gentium* 22 and the canon deliberately state "*semper libere*" and not "*semper et libere*" in order to avoid the impression that the pope may continuously and arbitrarily meddle in the affairs that are the competence of bishops in their dioceses. In *Lumen gentium*, preliminary explanatory note 4°, the same idea is expressed when it affirms that "the Pope may, if he so desires, exercise his power at any time ('*omni tempore, ad placitum*'), as required by his own ministry."[1]

Another consequence of this freedom of the pope in the exercise of his power is that it is within his judgment and discretion to decide the methods, personal or collegial, for executing it, although he must take into account "the needs of the Church, which vary with the passing of time" (*pen* 3°). Lastly, the pope is never legally bound by the votes of the other members of the College, and it is within his discretionary judgment to choose the methods and manners for obtaining assistance that may be rendered by the other bishops, taking into account the good of the Church and the needs of the faithful.[2]

1. Cf. G. PHILIPS, *La Iglesia y su misterio* I (Barcelona 1968), pp. 365–366.
2. For all these characteristics of power, see also J. HERVADA, *Elementos de derecho constitucional canónico* (Pamplona 1987), pp. 274–277.

332 **§ 1. Plenam et supremam in Ecclesia potestatem Romanus Pontifex obtinet legitima electione abipso acceptata una cum episcopali consecratione. Quare, eandem potestatem obtinet a momento acceptationis electus ad summum pontificatum,qui episcopali charactere insignitus est. Quod si charactere episcopali electus careat, statim ordinetur Episcopus.**

§ 2. Si contingat ut Romanus Pontifex muneri suo renuntiet, ad validitatem requiritur ut renuntiatio libere fiat et rite manifestetur, non vero ut a quopiam acceptetur.

§ 1. The Roman Pontiff acquires full and supreme power in the Church when, together with episcopal ordination, he has been lawfully elected and has accepted the election. Accordingly, if he already has the episcopal character, he receives this power from the moment he accepts election to the supreme pontificate. If he does not have the episcopal character, he is immediately to be ordained bishop.

§ 2. Should it happen that the Roman Pontiff resigns from his office, it is required for validity that the resignation be freely made and properly manifested, but it is not necessary that it be accepted by anyone.

SOURCES: § 1: c. 219; Pius PP. XII, Ap. Const. *Vacantis Apostolicae Sedis*, December 8 dec. 1945, 101 (*AAS* 38 [1946] 97); *CD* 2; *RPE* 88
§ 2: cc. 185, 186

CROSS REFERENCES: cc. 124–128, 146–156, 184, 187–189, 331, 336

COMMENTARY

Eduardo Molano

1. *The acquisition of the power of the pope*

The canon establishes the requirements for the pope to acquire full and supreme power. Pontifical power is acquired when the two elements are present that current regulations deem constitute that power: a) the act of legitimate election followed by the act of acceptance by the elected party and b*) episcopal ordination* of the elected party. Until the combination of both of these elements takes place (*una cum*), the pontifical power is not fully constituted. This is so in current canon law, at least according

to the provisions of positive ecclesiastical law, without prejudice as to whether it is also according to divine law.

The legislator of the canons did not want to decide expressly the theological and canonical question of the origin of pontifical power, nor the constitutional role played by election-acceptance and the role played by episcopal ordination of the elect. The question arose during the discussion of the outlines for the draft of *Lex Ecclesiae fundamentalis*, and in order to make it clearer that the Code should not settle the matter authoritatively, the term *iure divino* was finally deleted after being included in all the previous drafts.[1]

There was also an awareness that the actual possibility of electing a layman as pope, or even a member of the clergy who was not a consecrated bishop, was rather remote. On the other hand, it is not the mission of the legislators to settle doctrinal disputes. According to the Council and post-conciliar doctrine, which favors unity and not separation between the power of orders and the power of jurisdiction, the canon has clearly stated the need for a combination of both elements in order that, at least by ecclesiastical law, the supreme power of the Roman Pontiff be constituted.

This legislative option is also consistent with the statements in the commentary of the previous canon. If the pope is above all the bishop of Rome and the successor of Peter, and through obtaining the Roman episcopate, he becomes the Vicar of Christ and the pastor of the universal Church, he cannot take office nor the power he acquires unless there is prior episcopal ordination. In order to be the head, it is necessary to be a member and, in order to be a member of the College, sacramental consecration and hierarchical communion are needed according to Vatican II and canon 336 of the Code. This requirement establishes validity for all who are members of the College, including the head.

As is evident, the issue of the origin of pontifical power is not inconsistent with the issue of the origin of power in general; therefore, the answer to this question is related to the answer given regarding the origin and basis of ecclesiastical power; that is, the role played by the sacrament of holy orders and canonical mission. In the case of pontifical power, it is the role played by episcopal ordination of the elect and its relationship with the so-called "divine mission" that is received through the act of election-acceptance. In accordance with the doctrine that deems episcopal ordination to be the cause and origin of at least a part of ecclesiastical power, and that the canonical mission is more a complementary element with regard to determination of its sphere of exercise, canon 332 § 1 has required episcopal ordination, together with the divine mission for the origin and constitution of papal power.

1. Cf. *Comm.* 8 (1976), p. 96.

Consistent with this provision, the canon then establishes that if the elected party is a bishop, he obtains power from the moment of his acceptance. If not, he must immediately (*statim*) be consecrated as a bishop.

The canon has absorbed a substantial part of the provisions of the Apostolic Constitution *Romano Pontifici eligendo*, promulgated by Paul VI on January 10, 1975, which has been replaced with the Apostolic Constitution *Universi Dominici Gregis*, promulgated by John Paul II on February 22, 1996. This document also contains the current legal procedure on election of the pope by the cardinals meeting in conclave, according to a procedure dating back to the early Middle era.[2]

2. *Resignation from the papal office*

Loss of the papal office can occur in several ways. The most common is death, and it is so obvious that the Code has not felt the need to mention it. Leaving aside the consideration of other possible doctrinal situations—such as psychological insanity, heresy, schism, or apostasy—canon 332 § 2 only refers to resignation as a possible case of the loss of power.

For the act of resignation to be valid, the Code requires that it be done freely and properly manifested, but no act of acceptance is required. Therefore, as with all legal acts, the resignation must be free and without willful defects or errors rendering a legal act invalid (cc. 124–128; 187–189). On the other hand, in order to safeguard the necessary juridic consequences, it is logical that the legislator would also expressly require that the desire to resign be properly manifested in such a way that there is clear evidence thereof. No given form is required, although it is logical that it be in writing before witnesses, which is the ordinary procedure for this type of act (c. 189 § 1).

As for the lack of a requirement for acceptance by anyone, it is also a consequence of the principle that "the First See is judged by no one," which appears so frequently in canon law (cf. commentary on c. 331).

2. Cf. J.L. GUTIÉRREZ, commentary on c. 332, in *Pamplona Com*, p. 249.

333 **§ 1. Romanus Pontifex, vi sui muneris, non modo in universam Ecclesiam potestate gaudet, sed et super omnes Ecclesias particulares earumque coetus ordinariae potestatis obtinet principatum, quo quidem insimul roboratur atque vindicatur potestas propria, ordinaria et immediata, qua in Ecclesias particulares suae curae commissas Episcopi pollent.**

§ 2. Romanus Pontifex, in munere supremi Ecclesiæ Pastoris explendo, communione cum ceteris Episcopis immo et universa Ecclesia semper est coniunctus; ipsi ius tamen est, iuxta Ecclesiae necessitates, determinare modum, sive personalem sive collegialem, huius muneris exercendi.

§ 3. Contra sententiam vel decretum Romani Pontificis non datur appellatio neque recursus.

§ 1. By virtue of his office, the Roman Pontiff not only has power over the universal Church, but also has pre-eminent ordinary power over all particular churches and their groupings. This reinforces and defends the proper, ordinary, and immediate power which the bishops have in the particular churches entrusted to their care.

§ 2. The Roman Pontiff, in fulfilling his office as supreme pastor of the Church, is always joined in communion with the other bishops, and indeed with the universal Church. He has the right, however, to determine, according to the needs of the Church, whether this office is to be exercised in a personal or in a collegial manner.

§ 3. There is neither appeal nor recourse against a judgment or a decree of the Roman Pontiff.

SOURCES: § 1: c. 218 § 2; Pius PP. XI, Enc. *Mortalium animos*, 6 ian. 1928 (*AAS* 20 [1928] 15); Pius PP. XI, Enc. *Ad salutem*, 20 apr. 1930 (*AAS* 22 [1930] 211–212); Pius PP. XI, Enc. *Lux veritatis*, 25dec. 1931 (*AAS* 23 [1931] 497–505); Pius PP. XII, Enc. *Mystici Corporis*, 29 iun. 1943 (*AAS* 35 [1943] 210–213, 227); Pius PP. XII, Enc. *Sempiternus rex*, 8 sep. 1951 (*AAS* 43 [1951] 633); *LG* 13, 18, 22, 27; *CD* 2, 8
§ 2: Pius PP. XII, Enc. *Mystici Corporis*, 29, 1943 (*AAS* 35 [1943] 210–215); Pius PP. XII, Enc. *Fidei donum*, 21 apr. 1957 (*AAS* 49 [1957] 236–237); *LG* 13, 18, 22, 23, 27, *pen* 3 et 4; *AG* 22; Syn. Bish. *Nunc nobis*, 25 oct. 1969
§ 3: c. 228 § 2

CROSS REFERENCES: cc. 87, 291, 331, 337 § 3, 373, 375, 377, 381 § 1, 391, 399–400, 431, 435–437, 449 § 1, 1404, 1629, 1°, 1732

COMMENTARY

Eduardo Molano

1. *The primacy of the pope over particular churches and their groupings*

Paragraph 1 of this canon clearly establishes two points: a) that the *primacy* of the bishop of Rome is exercised not only over the universal Church as a whole, but also over all particular churches and their groupings and b) that the exercise of that preeminent power is not intended to diminish or reduce the scope of competence of the ordinary power of the bishops in their churches, but rather to reinforce and defend it.

With respect to the first point, it must be said that it is a particular manifestation of the *immediate* power of the pope by virtue of his office (cf. commentary on c. 332). This canon clarifies the fact that Roman primacy is not only exercised over the universal Church as a whole, as if it were an abstract entity (this would presuppose an inadequate concept of the universal Church), but rather presupposes the Church constituted as a *communio ecclesiarum* in which the universal Church is present and subsists in the particular churches by virtue of that mutual interiority that is a consequence of their organic structure. Therefore, the pope also has *ordinary power* over each one of the particular churches united in communion with the Church of Rome, although that ordinary power has no reason to be exercised continually (it is not ordinary in the common sense but rather in the technical sense).

What is intended in this canon is not to deny the power— which is ordinary, proper, and immediate—that the bishops have in their churches (c. 381 § 1), but precisely to reinforce and defend that power in the sense expressed by *Lumen gentium* 27 ("their power is not nullified by the supreme, universal power, but on the contrary, it is affirmed, reinforced, and defended"). For this reason, during discussions of the *schemata* prior to the *Lex Ecclesiae fundamentalis*, there was no desire to delete paragraph 1 of the canon in spite of the request of one of the consultors on the Code Commission.[1]

1. Cf. Comm. 8 (1976), p. 97.

It is also clear that the exercise of the power of the bishops "is ultimately controlled by the supreme authority of the Church and can be confined within certain limits should the usefulness of the Church and the faithful require that" (*LG* 27). This is the reason for the practice of reserving certain cases for pontifical judgment, whether in favor of the Roman Pontiff himself or another ecclesiastical authority (c. 381 § 1).

Furthermore, the power of the pope over the particular churches and their groupings is exercised in different ways, as established in many cases by law; for example, with respect to the creation or erection of certain structures (see cc. 373, 431, 435, 449 § 1, etc.) or in the naming and appointment of the bishops presiding over them (cc. 377 § 1, 437 § 1, etc.). There is also a certain vigilance exercised over the particular churches and their groupings (cc. 399, 400, 436 § 1,1°, etc.), and certain reserved rights (for example, in the dispensation of the law of celibacy in c. 291, or in the dispensation of universal laws regarding procedural or penal law in c. 87, etc.).

2. *The Roman Pontiff and communion with other bishops and the entire Church*

Paragraph 2 of the canon was introduced at the end of the writing of the draft of the *Lex Ecclesiae fundamentalis*.[2] There was an attempt to situate this canon within the context of the various aspects of the *communio ecclesiastica*. If paragraph 1 must be understood within the framework of the *communio ecclesiarum*, paragraph 2 is situated within the context of the *communio hierarchica* that must exist between the Roman Pontiff and the bishops as members of the same College, and even between the Roman Pontiff and the universal Church. The exercise of preeminent power is not exempt from the principle of communion in the Church, and the pope himself as the head of the Church cannot be separated in his activity from the body of pastors nor from the body of the universal Church, of which he himself is a qualified member. The preeminent or collegial exercise of power is thus placed in a context of communion (*communione ... est coniuctus*), which entails mutual and reciprocal requirements between the members—head and body.

As an essential complement to this communion requirement, the canon also clarifies the prerogatives of the head; the pope has the exclusive right to select the manner, personal or collegial, of exercising his office, taking into account "the needs of the Church." A characteristic of the power of the pope is that he is always able to exercise this power freely (cf. commentary on c. 331); therefore, when it comes time to decide between personal or collegial exercise of power, he is not bound legally to

2. Ibid., p. 98.

any other human circumstance. Nonetheless, in that it is a power in service of the ends and the good of the Church, the discretionary judgment of the pope must develop while bearing in mind and considering "the needs of the Church" (*iuxta Ecclesiae necessitates*). It would not be lawful to do otherwise, because the pope cannot act arbitrarily, and this is the only binding obligation on the pope when he exercises his right to choose.

In paragraph 3 we find evidence of the principle of *Prima Sedes a nemine iudicatur* ("the First See is judged by no one"), mentioned in canon 1404. Technical terminology is used to rule out any judicial appeal or administrative recourse against acts of the Roman Pontiff performed either juridically (judgments) or administratively (decrees). In the respective sections of the Code, this provision on pontifical acts is expressed in concrete terms. With regard to judicial appeal, it is expressly established that "no appeal is possible against a judgment of the Supreme Pontiff himself, or of the Apostolic Signatura" (c. 1629, 1°), and as for recourse against administrative decrees, those acts "given by the Roman Pontiff himself or by an Ecumenical Council" are expressly excepted (c. 1732).

334 **In eius munere exercendo, Romano Pontifici praesto sunt Episcopi, qui eidem cooperatricem operam navare valent variis rationibus, inter quas est synodus Episcoporum. Auxilio praetera ei sunt Patres Cardinales, necnon aliae personae itemque varia secundum temporum necessitates instituta; quae personae omnes et instituta, nomine et auctoritate ipsius, munus sibi commissum explent in bonum omnium Ecclesiarum, iuxta normas iure definitas.**

The bishops are available to the Roman Pontiff in the exercise of his office, to cooperate with him in various ways, among which is the synod of Bishops. Cardinals also assist him, as do other persons and, according to the needs of the time, various institutes; all these persons and institutes fulfill their offices in his name and by his authority, for the good of all the Churches, in accordance with the norms determined by law.

SOURCES: c. 230; *CD* 10; Paulus PP. VI, mp *Pro comperto sane*, 6 aug. 1967, I, II (*AAS* 59 [1967] 883); *REU* prooemium § 1; Syn. Bish. *Nunc nobis*, 25 oct. 1969

CROSS REFERENCES: cc. 331, 333 § 2, 342–367, 375

COMMENTARY

Eduardo Molano

Collaborators of the pope in the governance of the universal Church

This canon discusses the cooperation that various persons and institutions give the pope in the exercise of his office. This canon was drafted with the aim to make it clear that this covers the personal exercise of pontifical power and not its collegial exercise: "Here the question is only that of the aid given to the Roman Pontiff, when he acts in communion but on his own personal initiative ... However, the idea is clearer [a reference to a phrase from the draft for the *Lex Ecclesiae fundamentalis* project], and cannot be understood as if it were a collegial act."[1] The collaboration mentioned here enters the field of collegiality in a broad sense, and it could easily be described as *collegial collaboration*. This is how Pope John Paul II has described it when referring to a very clear, concrete example of this

1. *Comm.* 8 (1976), p. 99.

collaboration: the collaboration rendered by the bishops and other persons and institutions in the development of the Code itself ("idem Codex habendus est veluti fructus 'collegialis cooperationis'" [*SDL*]).

This canon is of interest precisely because it offers a basis, with some concrete examples, of what this personal exercise of power can be in communion with the bishops and with the entire Church (c. 333 § 2). The canon also explains what this collegiality can be in a broad sense, which the pope can always freely advance in the governance of the Church. First, it refers to the collaboration that bishops can give the pope in various ways, one of which has been specified by the institution of the Synod of Bishops. Secondly, it refers to the help rendered by the cardinals and by other persons and institutions.

In this canon, it was intended not to mention any type of specific persons or institutions (as it did before with the Synod of Bishops), thus leaving a door open for various possibilities "according to the needs of the time." Among these persons and institutions, the legates of the Roman Pontiff and the Roman Curia must be included because the Code itself refers to them in chapters IV and V, respectively, of this same section.

In the last paragraph, the canon establishes that all of these persons and institutions fulfill the offices entrusted to them in the name of the Roman Pontiff and with his authority; that is, they act with vicarious power. This implies that we are only discussing those persons and institutions that cooperate with the Roman Pontiff in the *government* of the universal Church.

There are other persons and institutions that also cooperate with the pope in his *pastoral* tasks as the pastor of the universal Church, and which are also mentioned in this part of the Code. This pastoral cooperation occurs with those "institutions and communities established by Apostolic Authority for specific pastoral tasks. They belong *as such* to the universal Church, though their members are also members of the particular churches where they live and work."[2] Among them are personal prelatures or military ordinariates. The raison d'être of the ordinariates is precisely to render that pastoral collaboration that the apostolic authority erecting it makes available to the particular churches. Because it is not a matter of strictly *structures of governance* for cooperating with the pope in the governance of the universal Church, but rather *pastoral structures* (although they also include a hierarchical governmental structure for their own members), they are not exactly included among the institutions referred to in this canon. They are not considered in the chapters of this section, which are devoted only to collaborators with the Pontiff in the universal governance of the Church.

2. *Communionis notio*, no. 16.

Chapters II–V of this section of the Code are devoted to regulating the institutions or persons with functions of governance referred to in the canon in the following order: the Synod of Bishops, the College of Cardinals, the Roman Curia and papal legates. In this way, proper to the Code, the mandate of canon 334 is complied with, referring the regulation of these institutions to "the norms determined by law." With regard to the Roman Curia, canon 360 still refers to another particular law outside the Code that regulates the constitution and competence of the various bodies of the Curia. The law now in force was promulgated by Pope John Paul II through the Apostolic Constitution *Pastor bonus* of June 28, 1988,[3] which establishes the new ordering of the Roman Curia.

3. *AAS* 80 (1988), pp. 841–912.

335 **Sede romana vacante aut prorsus impedita, nihil innovetur in Ecclesiae universae regimine: serventur autem leges speciales pro iisdem adiunctis latae.**

When the Roman See is vacant or completely impeded, no innovation is to be made in the governance of the universal Church. The special laws enacted for these circumstances are to be observed.

SOURCES: cc. 241, 436; Pius PP. XII, Ap. Const. *Vacantis Apostolicae Sedis*, December 8 dec. 1945, 1–28 (*AAS* 38 [1946] 67–74); *RPE* 1–26; *REU* prooemium

CROSS REFERENCES: cc. 19, 332 § 2, 340, 412, 428 § 1

COMMENTARY

Eduardo Molano

Juridical system for the governance of the universal Church in the case of a vacant or impeded see

This canon establishes the juridical system for the universal Church in the event that the Roman See is vacant or impeded. On the one hand, it sets forth the general principle for these cases ("While the see is vacant, no innovation is to be made"), which is also applicable in dioceses and particular churches (c. 428 § 1). On the other hand, it refers the applicable juridical system to special laws made for these cases (cf. commentary on canon 332 § 2 for the various situations that could give rise to the loss of the papal office and the resulting vacancy of the Holy See, with death being the normal situation).

Regarding the case of an *impeded see*, the Code does not contemplate just the particular case of the Roman See, but it also treats the diocesan episcopal see (even if it inseparably includes the *munus petrinum*). The norm governing the case in a diocese applies by analogy (c. 19). According to canon 412, "The episcopal see is understood to be impeded if the diocesan bishop is completely prevented from exercising the pastoral office in the diocese by reason of imprisonment, banishment, exile or incapacity, so that he is unable to communicate, even by letter, with the people of his diocese." This norm also applies to the Roman See *servatis de iure servandis*.

With respect to the juridical norms regarding *a vacancy in the Roman See*, there is a special law promulgated for this situation, the Apos-

tolic Constitution *Universi Dominici Gregis*, of February 22, 1996.[1] The first part of this law refers to the period when the Apostolic See is vacant, developing five chapters of norms for the juridical system of the Church during this period, as well as concrete consequences of the general principle of *nihil innovetur*. The governance of the Church is entrusted to the College of Cardinals only for the handling of ordinary non-deferrable matters, while they prepare everything necessary for the election of a new pope (*UDG* 2). The College, during that time, has no power or jurisdiction over the matters to be handled by the pope while he is alive; all the rest is reserved to the future pope (*UDG* 1). The College cannot decide anything concerning the rights of the Apostolic See and of the Church, nor allow them to be diminished in any way. On the contrary, it is its duty to defend them (*UDG* 3). Nor can the laws emanating from the Roman Pontiffs be amended or changed, nor can anything be added or anything be exempted from a portion thereof, especially with regard to the system for the election the Roman Pontiff (*UDG* 4). It is also the duty of the College of Cardinals to decide any questions arising in connection with the interpretation of the norms of this constitution (*UDG* 5). They must also decide anything that must be resolved if a problem should arise that, in the opinion of the majority of the cardinals present, cannot be deferred to a later time (*UDG* 6).

With respect to the juridical system concerning the *vacant see*, there is a concern regarding the authority maintained by the congregations and the tribunals of the Roman Curia during this time; it is referred to in chapter IV of part I of the same apostolic constitution. During a vacancy in the see, the Roman congregations have no authority in those matters that the filled see cannot handle or conduct without express approval from the pope (*facto verbo cum SSmo.*, or *ex Audientia SSmi.*, or *vigore specialium et extraordinarium facultatum*, which the Roman Pontiff usually grants to his prefects or secretaries) (*UDG* 24).The ordinary authority of each congregation does not cease with the death of the Pontiff, but it should only treat questions of minor importance (*UDG* 25). The Signatura and the tribunals will continue to handle cases according to their own laws, observing the prescriptions of the articles 18, 1 and 3 of the Apostolic Constitution *Pastor bonus* (*UDG* 26).

With regard to the juridical system for an *impeded see*, there is no special law; therefore, the provisions of UDG for a vacant see may be applied by analogy, *servatis de iure servandis*.

1. *AAS* 88 (1996), pp. 305–343.

ART. 2
De Collegio Episcoporum

ART. 2
The College of Bishops

336 **Collegium Episcoporum, cuius caput est Summus Pontifex cuiusque membra sunt Episcopi vi sacramentalis consecrationis et hierarchica communione cum Collegii capite et membris, et in quo corpus apostolicum continuo perseverat, una cum capite suo, et numquam sine hoc capite, subiectum quoque supremae et plenae potestatis in universam Ecclesiam exsistit.**

The head of the College of Bishops is the Supreme Pontiff, and its members are the bishops by virtue of their sacramental consecration and hierarchical communion with the head of the College and its members. This College of Bishops, in which the apostolic body abides in an unbroken manner, is, in union with its head and never without its head, also the subject of supreme and full power over the universal Church.

SOURCES: c. 329 § 1; Pius PP. XI, Enc. *Ecclesiam Dei,* 12 nov. 1923 (*AAS* 15 [1923] 573–574); *LG* 20, 22, 23, *pen*; *CD* 4, 44, 49; *AG* 38; Syn. Bish. *Elapso Oecumenico*, 22 oct. 1969

CROSS REFERENCES: cc. 135 § 2, 204 § 2, 330–331, 333 § 2, 337, 339 § 1, 341 § 2, 375 § 2, 749 § 2, 752, 754–756, 782 § 1, 1372, 1732

COMMENTARY
Eduardo Molano

The College of Bishops: nature, organic structure, and power

This canon is the first in a series of canons devoted to the College of Bishops, which is the topic of article 2, separate from article 1, which

discusses the Roman Pontiff. The main statement of this canon is that the College of Bishops is also the subject of full and supreme power over the entire Church. This statement is taken verbatim from *Lumen gentium* 22b, as well as the series of subsections regarding various aspects of the College with which the canon completes the main statement. Due to the importance of the topic in question and its source (Vatican Council II), canon 336 is of itself of great value, and also has value as the key for interpreting other canons of the Code related to the principle of collegiality.

The first aspect referred to in the subsections is the *structure* and *organic composition* of the College. Essential elements of the College are the Roman Pontiff as its head, and the bishops, who are its other members. Later it reiterates that without the head of the College, there is not and there cannot be a subject of power. The head is situated within the College and not outside of it (cf. introduction to this section and commentary on c. 330). As long as the College always exists, the Roman Pontiff is also always the head of the College, and this characteristic is inseparable from the holder of the office of Peter.

Another aspect referred to is *admission* to the College. Bishops become members through *sacramental consecration* and *hierarchical communion* with the head and the members of the College. Both of these elements must come together for admission. Although *sacramental consecration results in membership*, hierarchical communion is an *intrinsic requirement* for the full efficacy of the sacrament, and it can be described as an *essential characteristic*. The combination of both elements gives rise to a *legitimate consecration*, which is the actual cause for membership.

It is also worth noting that hierarchical communion is an objective situation, which either exists or does not exist in reality.[1] Given its organic structure, it is incumbent upon the Roman Pontiff as the head of the College to guarantee and certify the authenticity of the communion. The act by which the pope acknowledges communion assumes a meaning that is more declarative than constitutive. This acknowledgment can take many explicit or implicit forms. It is formally distinct from the canonical mission, although at times the canonical mission—which mainly determines the scope of exercise of power in the Church—is a way of implicitly declaring communion, and in any event, it is always presupposed.

Another important statement of the canon, a verbatim reproduction of *Lumen gentium* 22b, is that the *apostolic body continuously subsists in* the College of Bishops. This statement is completely consistent with the relationship already established in canon 330 between Peter and the Apostles, and the pope and the bishops. Canon 336 goes one step further

1. Cf. E. CORECCO, "Natura e struttura della 'Sacra Potestas' nella dottrina e nel nuovo codice di diritto canonico," in *Communio* 75 (1984), p. 38.

than the Council, and affirms the *succession* of the Apostolic College through the College of Bishops. In fact, it uses the double terminology (*collegium* and *corpus*) in order to avoid polarization of just one meaning of the term College. The statement implies the permanent existence of the College of Bishops as the College and not just an existence at "an interval." Although the College does not act continually in strictly collegiate activity, but only "at intervals," it does so with the consent of the head (*pen* 4).

The College is also (*quoque*) the subject of full and supreme power over the Church, but always with its head and never without its head. In the introduction to this section we have already spoken of the doctrinal thesis of the subject of the supreme power of the Church. In the statement of this canon, arguments can be found in favor of the thesis of the inadequately distinct double subject, and others can be seen to favor the collegial thesis. We have already stated that it is not the mission of the Code to settle doctrinal issues.

Regarding the insistence in the canon on the necessary presence of the head for the existence of the College as a subject of power, the phrase in *Lumen gentium* 22b commenting on this issue should be noted: "This power can be exercised only with the consent of the Roman Pontiff" (*non nisi consentiente Romano Pontifice*). The final formula of the Council replaced earlier wording that stated that the College could only exercise its power "dependent on the Pope exclusively" (*non nisi dependenter a Romano Pontifice*). By amending it, the Council attempted to state that between the head and the members of the College there is a communion juridically expressed (when the power is exercised) in an *act of consent* (*consensus*) by the head. This act of consensus by the head implies an act of will, but is performed within the College and within a context of communion. Therefore, it is not a dependency or subjection to an outsider, to a type of foreign power.[2]

It is clear that if the College were not the subject of *full and supreme power*, the power of the Roman Pontiff would be diminished when he acts as the head of the College in strictly collegiate activity, because the College cannot exist without its head. The pope would only enjoy full power when acting personally and not collegially.[3]

2. Cf. G. PHILIPS, *La Iglesia y su misterio* I (Barcelona 1968), pp. 367–368.
3. Ibid., p. 367.

337 **§ 1. Potestatem in universam Ecclesiam Collegium Episcoporum sollemni modo exercet in Concilio Oecumenico.**

§ 2. Eandem potestatem exercet per unitam Episcoporum in mundo dispersorum actionem, quae uti talis a Romano Pontifice sit indicta aut libere recepta, ita ut verus actus collegialis efficiatur.

§ 3. Romani Pontificis est secundum necessitates Ecclesiae seligere et promovere modos, quibus Episcoporum Collegium munus suum quoad universam Ecclesiam collegialiter exerceat.

§ 1. The College of Bishops exercises its power over the universal Church in solemn form in an Ecumenical Council.

§ 2. It exercises this same power by the united action of the Bishops dispersed throughout the world, when this action is as such proclaimed or freely accepted by the Roman Pontiff, so that it becomes a truly collegial act.

§ 3. It belongs to the Roman Pontiff to select and promote, according to the needs of the Church, ways in which the College of Bishops can exercise its office in respect of the universal Church in a collegial manner.

SOURCES: § 1: c. 228; *LG* 22, 25; *CD* 4
§ 2: *LG* 22; *CD* 4; *DPME* 50–53
§ 3: *LG* 22, *pen* 3

CROSS REFERENCES: cc. 333 § 2, 336, 338–341, 1372, 1732

COMMENTARY

Eduardo Molano

The ecumenical council and other extraconciliar forms of exercising collegiality

The supreme power of the College of Bishops over the entire Church is exercised in *solemn form* in an *ecumenical council*. The Code does not state nor is it its mission to define what an ecumenical council is. To this end it is necessary to consider the tradition of the Church, and there we also find varied experiences and diverse manifestations among the ecu-

menical councils that have been held until now. In the last analysis, there is the condition established by *Lumen gentium* 22b: "There never is an ecumenical council which is not confirmed or at least recognized as such by the successor of Peter." But among the ecumenical councils held in the East, the medieval councils held in the West, and the ecumenical councils of the Modern era (Trent or Vatican I and II), there is a remarkable variety in their forms and procedures for convocation, constitution, activity, etc.

Considering historical experience with councils, and comparing paragraphs 1 and 2 of canon 337, there is a characteristic typology of the manner in which the councils exercise supreme authority, and it distinguishes them from other possible extraconciliar forms. The ecumenical council is a solemn assembly of the College of Bishops *meeting in one place*, while other extraconciliar collegial forms are ways of exercising supreme authority "by the united action of the bishops *dispersed* throughout the world." The phrase in quotation marks from paragraph 2 of the canon, which comes verbatim from *Lumen gentium* 22b, was placed there intentionally, altering the original wording of the canon, precisely to emphasize that it is always a question of the action of the bishops dispersed in the world. *Lumen gentium* thus avoided the tension between the primacy of the pope and the episcopacy that might arise from an extraconciliar exercise of collegiality. Without the clarification of *Lumen gentium*, a meeting of a group of bishops on some controversial issue could later attempt to impose its conclusions on the pope, in such a way that the pope, facing a *fait accompli*, would have no alternative other than to cause a disruption in the unity among a part of the episcopate.[1]

The ecumenical council is a *solemn* form in which the College exercises its supreme power. The Council chose this term instead of the word *special*, and thus the Code also uses it. Otherwise, if it were accepted that the Council is a special way to exercise supreme power, the other extraconciliar collegiate forms referred to in paragraph 2 would be termed *regular* by comparison. This does not appear very certain, because there are collegiate manifestations that still leave a lot to be determined regarding their factual characteristics.[2]

In spite of some indecision during the revision phase of the draft of the *Lex Ecclesiae fundamentalis* regarding the appropriateness of paragraph 2 of this canon, the final decision was made to adopt verbatim the text of *Lumen gentium* 22b. The indecision arose from the belief that the extraconciliar exercise of collegiality can take place only rarely due to the dispersion of the bishops, and that laws must consider what commonly occurs and not what rarely occurs. It is also believed that it is not easy to distinguish between *proper* and *collegial action in the strict sense*, *collegial action in a broad sense*, and *personal acts* of the Roman Pontiff.

1. Cf. *Comm.* 8 (1976), p. 104.
2. Cf. G. PHILIPS, *La Iglesia y su misterio* I (Barcelona 1968), p. 376.

Rather, what should be considered is the doctrine of *ecclesiastical communion,* which is the common framework in which all forms of power should be exercised. For some consultors of the Code Commission, paragraph 3 of the current canon would have been sufficient; it states that the determination of the forms of exercising supreme power by the College should be left in the hands of the Roman Pontiff.[3]

Such considerations help us to understand how difficult it is to establish a norm for situations in which the facts have not been sufficiently determined or that do not have enough historicalprecedent. Canon 337 § 2 does make clear that the *necessary action* of the head of the College, is to promote, or at least to freely accept, the collegial action of the bishops dispersed throughout the world.

Lastly, the exclusive competence of the Roman Pontiff to determine and promote the concrete forms of collegial exercise by the College is also made clear. The section *secundum neccessitates Ecclesiae*, taken from *Lumen gentium* (preliminary explanatory note 3), states that the pope's decisions are free and discretionary, but cannot be arbitrary, because he must have his sights set on the good of the Church "intuitu boni Ecclesiae, secundum propriam discretionem procedit" [*pen* 3]).

3. Cf. *Comm.* 9 (1977), pp. 84–86.

338 **§ 1. Unius Romani Pontificis est Concilium Oecumenicum convocare, eidem per se vel per se vel per alios praesidere, item Concilium transferre, suspendere vel dissolvere, eiusque decreta approbare.**

§ 2. Eiusdem Romani Pontificis est res in Concilio tractandas determinare atque ordinem in Concilio servandam constituere; propositis a Romano Pontifice quaestionibus Patres Concilii alias addere possunt, ab eodem Romano Pontifice probandas.

§ 1. It is the prerogative of the Roman Pontiff alone to summon an Ecumenical Council, to preside over it personally or through others, to transfer, suspend, or dissolve the Council, and to approve its decrees.

§ 2. It is also the prerogative of the Roman Pontiff to determine the matters to be dealt with in the Council, and to establish the order to be observed. The Fathers of the Council may add other matters to those proposed by the Roman Pontiff, but these must be approved by the Roman Pontiff.

SOURCES: § 1: cc. 222 § 1, 227; *LG* 22
§ 2: c. 226; Ioannes PP. XXIII, Alloc., 11 oct. 1962 (*AAS* 54 [1962] 786–795); *LG* 22, *pen* 3

CROSS REFERENCES: cc. 95, 339–341

COMMENTARY

Eduardo Molano

The convocation and other possible actions in the course of the council

Canon 338 § 1 enumerates a series of *exclusive* prerogatives of the Roman Pontiff as the head of the council: summoning it, presiding over it, transferring it, suspending it, dissolving it, and approving its decrees. These prerogatives are at present required by current positive law, which may go beyond what is strictly required *iure divino*. As Vatican II states, the only essential condition for the existence and validity of a council is that it be "confirmed or at least accepted by the successor of Peter" (*LG* 22b). This is a requisite of divine law. Additionally, the various prerogatives of the pope that are enumerated in the council itself are now included in the canon in question: summoning them, presiding over them,

and confirming them ("haec Concilia convocare iisdem praesidere et eadem confirmare" [ibid.]).

The *proper and exclusive right* to convoke a council belongs to the pope by virtue of his *jurisdictional primacy,* because it is incumbent upon him to take the initiative to call a meeting of the college and to authorize its exercise of supreme power. He is the only person who can obligate the other bishops and other persons convoked to attend the council. On the other hand, no one can summon a council without the consent of the pope. Although the first eight ecumenical councils were summoned by the emperor, the summons either assumed the necessary authorization of the pope or at least was confirmed by his subsequent consent.[1]

On the other hand, the pope is not obligated by any absolute necessity to summon a council. The appropriateness of a summons is within his discretionary judgment, taking into account the needs of or benefits for the Church and the faithful. Normally, councils have been motivated by the need to solve or answer certain doctrinal or dogmatic issues, or pastoral or disciplinary issues. The various attempts that have arisen throughout history to subject the episcopate to periodical summons have never taken hold.

It is also the prerogative of the pope *a*) to *preside over it personally or through others* (this has occurred in history, usually through papal delegates), *b*) to *transfer* it to the site where it is to be held because its summons is not linked to any given place, *c*) and to *suspend or dissolve* it; in fact these are two different juridical acts because suspension can be decreed with the intention merely to postpone holding more sessions of the council, while dissolution means its adjournment and final termination. These prerogatives fall exclusively to the primacy of the pope because council Fathers cannot abandon councils at will in such a way that the council would have to be suspended or dissolved due to desertion or abandonment by its members.

The most important prerogative of the pope in the council is that of *approving its decrees,* because it is an essential requirement for the validity of council's decisions. In this canon, the term *approve* is taken in a more generic sense than in canon 341 § 1, in which *confirmation* and *promulgation* of its decrees by the pope are also required. Were it not for this distinction in canon 341 § 1, approval by the pope would be the essential minimum requirement because within this act, they would also be included for confirmation and promulgation. Given the technical meaning of these two acts, which are formally distinct from approval, it seems appropriate that the Code has distinguished between them.

Additionally, the term *decrees* is not used in this canon in a technical sense, but it includes all acts and decisions that may be adopted by the

1. Cf. F.J.WERNZ and P.VIDAL, *Ius canonicum* II, 3rd ed. (Rome 1943), pp. 528–529.

council (for example, constitutions, decrees, and declarations, according to the terminology adopted by Vatican II), and not only decrees in a technico-juridical sense.[2]

Together with the *exclusive* prerogatives of the pope (*unius est*), there are other rights that are also shared by the Fathers of the council. Canon 338 § 2 specifically refers to the right to determine which matter will be dealt with in the council, as well as the right to establish the agenda. Notwithstanding the previous prerogatives, these proposals are also subject to subsequent approval by the pope. In this way, from the beginning and in the phase preliminary to conciliar deliberations, the stage is set for collaboration between the head and its members in determining the council's agenda or in determining its procedural norms (regarding the expression *ordinem*, used by this canon, cf. c. 95).

2. Cf. *Comm.* 9 (1977), p. 87.

339 **§ 1. Ius est et officium omnibus et solis Episcopis qui membra sint Collegii Episcoporum, ut Concilio Oecumenico cum suffragio deliberativo intersint.**

§ 2. Ad Concilium Oecumenicum insuper alii aliqui, qui episcopali dignitate non sint insigniti, vocari possunt a suprema Ecclesiae auctoritate, cuius est eorum partes in Concilio determinare.

§ 1. All bishops, but only bishops who are members of the College of Bishops, have the right and the obligation to be present at an Ecumenical Council with a deliberative vote.

§ 2. Some others besides, who do not have the episcopal dignity, can be summoned to an Ecumenical Council by the supreme authority in the Church, to whom it belongs to determine what part they take in the Council.

SOURCES: § 1: c. 223 § 1,2° et § 2; Ioannes PP. XXIII, Ap. Const. *Humanae salutis*, 25 dec. 1961 (*AAS* 54 [1962] 5–13)
§ 2: c. 223 § 1, 4° et §§ 2 et 3; Ioannes PP. XXIII, mp *Appropinquante concilio*, August 6 aug. 1962 (*AAS* 54 [1962] 609–631); *Ordo Concilii Oecumenici Vaticani II celebrandi*, art. 1 (*AAS* 54 [1962] 612)

CROSS REFERENCES: cc. 331, 336, 337, 375

COMMENTARY

Eduardo Molano

Members of the council and the different ways of participating in its deliberations

Who has the right to participate in the council and who should therefore be summoned to it? The answer was given most clearly in the Second Vatican Council: "This sacred synod decrees that all bishops who are members of the episcopal college, have the right to be present at an ecumenical council" (*CD* 4). The reason lies in the fact that, inasmuch as a council is a form of exercising the supreme authority residing in the College of Bishops, *all the bishops* who are *members* of the College through sacramental consecration and hierarchical communion have the right to participate in it. Thus, Vatican II already resolved a series of specific questions that had arisen regarding who should be summoned to the council,

whether only the formerly-called "diocesan bishops" exercising power of jurisdiction in particular churches or also the "titular bishops," whether only the bishops or also the prelates exercising quasi-episcopal jurisdiction in ecclesiastical divisions equivalent to dioceses, etc. The answer to these questions has to do with the origin and nature of the power of jurisdiction in the universal sphere of the Church. The fact that conciliar doctrine went in-depth on this question also provided an answer to the problem of who the ex officio members of the council are.

Canon 339 § 1 reflects that conciliar doctrine and has also simplified the complex enumeration of persons who have the right to be summoned to the council found in canon 223 of the 1917 Code. A comparison between the old and the new canon allows us to discover the underlying doctrines of the two Codes with regard to the specific question and also with regard to the more general question of the nature and origin of power in the Church.

Canon 339 § 1 also closely defines several points in the aforementioned text of *Christus Dominus* 4. The canon states that "all bishops, *but only bishops*, who are members of the College of Bishops, have the right and *the obligation* to be present at an ecumenical council with a *deliberative vote*." The following clarifications can be derived from this emphasis:

a) *Only bishops*

By stating that only bishops have the right to attend the council, the canon is consistent with the aforementioned reason for that right. At the same time, it is saying that all other persons lacking episcopal dignity that may be summoned are summoned by reason of a concession by the supreme authority of the Church. For this very reason, this supreme authority will determine the function to be performed by them in the council (c. 339 § 2).

The canon does not go into the question of bishops consecrated in non-Catholic churches (an ecumenical issue especially affecting the Orthodox churches) because it is an ecumenical council summoned for the Latin Catholic Church, and this implies that only those in full communion with the Church of Rome have the right to attend. By its very nature, a council exercises power in communion with the other members of the College. This restriction is without prejudice, however, to the ability of bishops not in full communion to be called as observers.[1]

b) *The right and the obligation*

Bishops not only have the right, but also the duty to attend the council. It is a duty and responsibility inherent in their status as members of the College of Bishops, and to that *sollicitudo omnium ecclesiarum* that

1. Cf. *Comm.* 9 (1977), p. 88.

they share with the pope It is a privilege to have this relationship manifested in an ecumenical council.

c) *With a deliberative vote*

Bishops have the right to participate in the council with a deliberative vote. It is a consequence of the exercise of the collegial power *strictu sensu* in a council. Given that, in a council, bishops are actual "teachers and judges" in the exercise of the power of the Church and not mere advisors, the technical formality that best manifests that function is the deliberative vote.

In addition to the bishops as members ex officio of the council, the supreme authority of the Church (therefore, the pope or the College itself, with its head and its members) can also call *other people* to participate in the council (c. 339 § 2). Inasmuch as the council is a solemn assembly representing the universal Church—the College of Bishops in itself possesses that representation—it may be advisable for other categories of the faithful to be summoned—clergy, laity, or members of religious orders—manifesting even more broadly that ecclesiastical representation. But however *intensive* that representation is, it is already complete through the College, inasmuch as the College is fully represented by the head, and the College of Bishops represents the unity as well as the universality and catholicity of the Church. As has already occurred in Vatican II, non-Catholic observers may also be called. In all of these cases, it is incumbent on the supreme authority of the Church to determine the function they are to perform and the position they are to hold within the council regarding its celebration, deliberations, decisions, etc.

340 **Si contingat Apostolicam Sedem durante Concilii celebratione vacare, ipso iure hoc intermittitur, donec novus Summus Pontifex illud continuari iusserit autdissolverit.**

If the Apostolic See should become vacant during the celebration of the Council, it is by virtue of the law itself suspended until the new Supreme Pontiff either orders it to continue or dissolves it.

SOURCES: c. 229

CROSS REFERENCES: cc. 332 § 2, 335, 338 § 1

COMMENTARY

Eduardo Molano

The interruption of the council by the vacancy of the Apostolic See

In the event of a vacancy of the Apostolic See, the council is interrupted *ipso iure*. It is incumbent on the next Pontiff to continue it or to dissolve it. Regardless of the reason for the vacancy of the Apostolic See, given that the council is the solemn assembly of the College of Bishops, and this College cannot exist without its head, the *interruption* of the council is the unavoidable result. Upon the vacancy, if the meeting of the bishops should continue, it would become a mere assembly of bishops without capacity to exercise supreme power over the universal Church, which power is proper to the College.

With respect to historical experiences of councils held during the vacancy of the Roman See (for example, the case of the Third Council of Constantinople, a part of which was held with the See of Peter vacant), their consideration as ecumenical councils results only from the subsequent acceptance and approval by the new Roman Pontiff. According to current law, the norm of canon 340 would prevent this possibility, because with the vacancy of the Apostolic See, the interruption of the council would be automatic *ipso iure*. Should the meeting continue as a *mere assembly of bishops* and should decisions be adopted, these decisions would no longer be conciliar decisions but merely episcopal ones. Should the new pope subsequently accept and approve them as decisions of the College of Bishops now with its head, we would have a possible example of what could be an extraconciliar collegial exercise of the supreme power.

On the other hand, if the new Pontiff should decide to *continue* the council that was interrupted by the vacancy of the Roman See, it would have to be again constituted as a council even though the sessions would continue uninterrupted. This occurred with Vatican II, after the death of John XXIII, when Paul VI decided to continue it.

341 **§ 1. Concilii Oecumenici decreta vim obligandi non habent nisi una cum Concilii Patribus a Romano Pontifice approbata, ab eodem fuerint confirmata et eius iussu promulgata.**

§ 2. Eadem confirmatione et promulgatione, vim obligandi ut habeant, egent decreta quae ferat Collegium Episcoporum, cum actionem proprie collegialem ponit iuxta alium a Romano Pontifice inductum vel libere receptum modum.

§ 1. The decrees of an Ecumenical Council do not oblige unless they are approved by the Roman Pontiff as well as by the Fathers of the Council, confirmed by the Roman Pontiff and promulgated by his direction.

§ 2. If they are to have binding force, the same confirmation and promulgation is required for decrees which the College of Bishops issues by truly collegial actions in another manner introduced or freely accepted by the Roman Pontiff.

SOURCES: § 1: cc. 222 § 2, 227; *LG* 22; FORMULA CONFIRMATIONIS IN CONCILIO VATICANO II ADHIBITA
§ 2: *LG* 22, *pen* 4

CROSS REFERENCES: cc. 8, 337, 338 § 1

COMMENTARY

Eduardo Molano

The approval, confirmation, and promulgation of the decrees of the episcopal college

For conciliar decrees to have binding force, they must be approved by the pope together with the Fathers of the council, and then they must also be confirmed and promulgated by order of the pope.

By divine law, only approval by the pope together with the Fathers of the council is required (see commentary on c. 338 § 1). This act of approval can be achieved with various formalities and even be broken down into a series of acts with a more complex procedure. Canon 341 has chosen this option and has preferred to distinguish between an act of strict approval by the pope of what has already been approved by the Fathers of the council and subsequent acts of confirmation and promulgation of con-

ciliar decrees by mandate of the pope. While the act of approval strictly stated falls to the pope and to the Fathers of the council (head and members of the council), the acts of confirmation and promulgation fall exclusively to the pope as the head of the College of Bishops (and of the council).

Regarding the act of *strict approval* by the pope, it must be said that, until it takes place, decisions made by the Fathers of the council are not yet decisions approved by the council, but only by some members of the council without the head. On the other hand, when the act of approval is given by the head, the decrees then become approved by the council itself.

Regarding the act of *confirmation*, it must be added that it does not seem to be distinguished from the act of approval (but it is distinguished from promulgation) in the formula adopted for Vatican II documents ("together with the Venerable Fathers in the Holy Spirit, we approve, prescribe, and establish it and command that what has thus been decided in the synod be promulgated for the glory of God").[1] Canon 341, however, has preferred to distinguish them, and it refers to a new act of confirmation by the pope following the approval. The meaning of this act of confirmation by the pope as the head of the council is one of verification that the acts of the council have been carried out correctly and in accordance with the procedures and formalities established in law. It has a significance similar to that of a *recognitio*, with the difference being that these are conciliar acts that have already been approved previously with the intervention of the pope together with the Fathers. After confirmation, the approved acts become firm and final.[2]

The act of *promulgation*, the last of the required juridical acts, has the significance characteristic of every *promulgatio*: It is the juridical act characteristic of the subject having the power, ordering that the approved norm or acts become binding on all their recipients and go into force within the established terms, and at the same time ordering that all parties obligated to apply them execute them as they are established. This is also incumbent only on the pope as the head of the council and not its members, as established in canon 341, as well as in the promulgation formula adopted by Vatican II. In this formula, confirmation was not distinguished from approval, and by being absorbed into approval, it became an act by the pope as well as by the Fathers of the Council. On the other hand, the order for promulgation of synod provisions falls exclusively to the pope.

With respect to other possible acts of the College of Bishops that are collegial but *extraconciliar*, canon 341 § 2 provides that they also need the same confirmation and promulgation in order to have obligatory force. In

1. Cf. *Comm.* 9 (1977), p. 90.
2. Cf. *Schema Legis Ecclesiae Fundamentalis. Textus emendatus cum relatione de ipso schemate deque emendationibus receptis* (Typis polyglottis Vaticanis 1971), p. 142.

this other form of collegial action, the Code also wanted to expressly distinguish this entire sequence of the primary acts as a way of better guaranteeing the legality, legitimacy, and effectiveness of the extraconciliar exercise of collegiality *sensu stricto*. This canon already presupposes minimal necessary requirements and basic procedural regulations for a collegial action that has been rarely experienced and whose factual circumstances are still hard to identify.

CAPUT II
De Synodo Episcoporum

CHAPTER II
The Synod of Bishops

342 **Synodus Episcoporum coetus est Episcoporum qui, ex diversis orbis regionibus selecti, statutis temporibus una conveniunt ut arctam coniuntionem inter Romanum Pontificem et Episcopos foveant, utque eidem Romano Pontifici ad incolumitatem incrementumque fidei et morum, ad disciplinam ecclesiasticam servandam et firmandam consiliis adiutricem operam praestent, necnon quaestiones ad actionem Ecclesiae in mundo spectantes perpendant.**

The synod of Bishops is a group of bishops selected from different parts of the world, who meet together at specified times to promote the close relationship between the Roman Pontiff and the bishops. These bishops, by their counsel, assist the Roman Pontiff in the defence and development of faith and morals and in the preservation and strengthening of ecclesiastical discipline. They also consider questions concerning the mission of the Church in the world.

SOURCES: *LG* 23; *CD* 5; *AS* prooemium, I–II; OS (1969) 1

CROSS REFERENCES: —

COMMENTARY
Gian Piero Milano

This chapter is placed in book II (not by coincidence) right after the canons referring to the College of Bishops and—by the express will of the

pope[1]—before the College of Cardinals, in order to emphasize the close relationship—with a markedly ecclesiological significance—with the principle of collegiality. This chapter describes the nature and functions of the Synod of Bishops, instituted by Paul VI in 1983 with the *Motu proprio Apostolica sollicitudo* of September 13, 1965.[2] It is considered to be one of the main innovations by Vatican II to contribute to the ecclesiastical order.

The Synod of Bishops is an institution that manifests, at the level of the constitutional structures of the Church, the *collegialis affectus*; that is, the ontological relationship, the bond of communion, of solidarity, and of joint responsibility that mediates, by reason of the sacrament, between the pope and his brothers in the episcopate, and which makes these brothers "solicitous for the good of the entire Church." The magisterium of the Council had expressed this meaning in the *Lumen gentium* 23 and in the *Christus Dominus* 5. These two documents may be considered the doctrinal and regulatory sources that gave rise to the synod.

This conclusion, supported by repeated interventions by pontifical authority, places in a proper perspective the old dispute over whether the synod should be included—and if so, to what degree—among the forms of manifestation, *sub specie iuris*, of the principle of episcopal collegiality, and consequently, what its powers over the universal Church should be. The answer is in the negative. Consequently, it more appropriately favors the tendency to redirect the synod to a broader, sacramental ecclesiological context in which the principle of collegiality, because it is an expression of the ontological reality of communion in the Church, is also manifested outside the juridical structures. In practice, this sometimes happens in para-canonical forms, which are included in the exercise of the *munus petrinum*. This episode, according to qualified doctrine, would be permeated with a collegial significance to the extent that its meaning is always understood in relationship to the College of Bishops and to the extent that even an individual act of the pope would be *eo ipso* an act of the College of Bishops, by virtue of an intrinsic "collegiality" with the primate.[3]

If the ecclesiological roots of the synodal institution must be redirected to this dimension of *collegialis affectus*, *sub specie iuris*, we have an auxiliary instrument of the primatial activity. It is endowed with consultative powers in the areas of strictly completed operational ability in connection with the personal responsibilities and prerogatives of the head of the College of Bishops.

Following these premises, the first idea to be expressed in the canon in question is terminological, and it refers to the description of the synod

1. Cf. *Comm.* 14 (1981), p. 180.
2. Cf. *AAS* 57 (1965), pp. 775–780.
3. Cf. K. RAHNER, "Zum Verhältnis zwischen Papst und Bischofskollegium," in *Euntes docete* 20 (1967), p. 47.

as a *coetus*, (assembly) to emphasize the prevalence of the personal and functional element over the institutional element. In this respect, it can be noted that the *Motu proprio Apostolica sollicitudo* defined the synod as an *institutum ecclesiasticum centrale*, which described its structural aspects and its position in the hierarchical order, while also evidencing its nature as an "entity." The Code Commission justified this omission expeditiously (and not convincingly), stating that its was a "rather base and superfluous" expression.[4] On the other hand, the adopted term (*coetus*)—as can be seen from the revisions of a parallel part of canon 115—designated, in the judgment of the Commission, a group of individuals *qui casu insimul sunt.*[5]

We can conclude, therefore, that the legislator of the Code wanted to downplay the institutional profile of the synod and favor the description of its functional dynamic more than its morphological structure, in line with the consultative nature of that assembly. Continuing with the exegesis on the omissions in the canon in contrast with the prior documents, we have to indicate that the phrase "partes agens totius catholici episcopatus" (*AS* I,c), with which the *Motu proprio* that instituted the synod (and before *CD* 5) highlighted the representative character of the synod with respect to the College of Bishops, was not reproduced. The Code Commission brought about this omission, stressing the "non-technical" nature of the term and its ambiguity, because representation of the College of Bishops in its legal sense could not be attributed to the synod (which, in truth, no one had seriously argued as doctrine).[6]

Moving on to the specific content of the canon, let us first indicate that the wording adopted to describe the institutional objectives of the synod are generic and merely descriptive, difficult to classify in technico-juridical frameworks. Instead, they are phrases that intend to show the ecclesiological roots of this institution, which, beyond its specific functions, constitute a particularly effective instrument of the manifestation of ecclesiastical communion at the highest level of the hierarchical structure of the Church.

For that reason, the synodal institution is assigned the main function of supporting a closer unity between the bishops and the Roman Pontiff, and of aiding the Pontiff by their counsel on faith and custom, ecclesiastical discipline, and questions related to the mission of the Church within temporal realities. Perhaps this scope of functions is too broad; it has been criticized on a doctrinal level.It is fully consistent with the fact that the activity of the synod is of a general nature and cannot be abstractly delineated on the basis of the statutory configuration of its objectives, but rather concretely; that is, by taking as a point of reference the will of the

4. Cf. *Comm.* 14 (1981), p. 92.
5. Cf. *Comm.* 14 (1981), p. 142.
6. Cf. *Comm.* 14 (1981), p. 93.

pope, who determines in each case the areas and questions to be submitted for synodal consideration. The synod, which now has over twenty-five years of experience (to this point, more than twenty assemblies have been held in various forms), has dealt with extremely diverse subject matters related to the internal life of the Church as well as to its external activity, and it has played an increasingly incisive and determining role in the exercise of the responsibilities of the pope in the pastoral governance of the universal Church.

343 **Synodi Episcoporum est de quaestionibus pertractandis disceptare atque expromere optata, non vero easdem dirimere de iisque ferre decreta, nisi certis in casibus potestate deliberativa eandem instruxerit Romanus Pontifex, cuius est in hoc casu decisiones synodi ratas habere.**

The function of the synod of Bishops is to discuss the matters proposed to it and set forth recommendations. It is not its function to settle matters or to draw up decrees, unless the Roman Pontiff has given it deliberative power in certain cases; in this event, it rests with the Roman Pontiff to ratify the decisions of the synod.

SOURCES: *AS* II

CROSS REFERENCES: —

COMMENTARY

Gian Piero Milano

The content of these statements, being very redundant in respect to the advisory function, evokes the *vexata quaestio*, which was already raised in the council, on the appropriateness of conferring, even in hypothetical terms, deliberative powers on the synod. This possibility is capable of creating more than a few difficulties at the highest level of the hierarchical structure of the Church, especially regarding the only collegial body with an episcopal basis endowed with deliberative powers: the ecumenical council. Precisely to clear the air of any misunderstandings in this regard, Paul VI had specified that the synod could not be considered in any way as an ecumenical council, because "it is lacking in the composition, the authority and the purposes of that Council."[1] More recently, John Paul II reaffirmed that conclusion in a speech to the Council of the General Secretariat of the Synod on April 30, 1983.[2]

Setting forth special regulations, the canon foresees the possibility that the synod may enjoy deliberative power when that power is conferred upon it by the pope, who must ratify its subsequent decisions. In using these terms, it must be clarified that the power in question is not "proper," but rather "delegated" by the pope. The various *schemata* of the Code

1. PAUL VI, Allocution, September 30, 1967, in *AAS* 59 (1967), p. 560.
2. Cf. *AAS* 75 (1983), p. 650.

offer an interesting clarification in this regard. Some members proposed that it be specified that, in the case of an exercise of deliberative power, the synod must be considered an *organum gubernationis universae Ecclesiae*. But the Commission answered that it was a *peculiare sacrorum Antistitum consilium, stabile episcoporum consilium*, not endowed with legislative or decisive power, *ne quidem vicariam*.[3]

Outside of these considerations, the hypothetical situation foreseen by this canon has not occurred at this time, and it would be difficult for it to happen in the future, especially since, as has been so convincingly shown,[4] even the "consultative" vote creates, within ecclesiastical norms, a determining bond that comes very close to a deliberative vote. In this way the authority of synodal conclusions is of the highest level, not so much due to the formal force of the pronouncement, as due to the representational capacity and sacramental character of the members of the synod. In this regard, in his speech to the Council of the Secretariat of the Synod, John Paul II noted that the opinion of the bishops meeting in the synod, if expressed in a unitary manner with a moral consensus, entails a "pondus Ecclesiae peculiaris generis, quod alicuius voti consultivi rationem simpliciter formalem excedit."[5]

In view of these considerations, the reference to the exercise of deliberative power seems inappropriate in the wording of the Code. This reference, albeit abstract, confers on the synod joint functions—advisory and deliberative—with an unstable ecclesiological basis, which, above all, has created more than a few misunderstandings. These are not just theoretical misunderstandings regarding the nature of the institution of the synod and its relationship to collegial power in the strict sense, but also positive misunderstandings in regards to the nature and objective of the final documents of various synodal assemblies. With respect to this last matter, it must be noted that, from a variety of areas and for a long time, it has been considered indispensable that a body with so much authority and with such qualified functions should in any case conclude with acts imbued with formal force and authority *(erga Ecclesiam universam)*. This claim has given rise to controversies and hopes that were later dashed. An example of this situation is the case of the synod of 1974, in which difficulties arising in approval of the final document led the synodal Fathers to formulate only an *elenchus quaestionum*, understood as a simple statement of the matters discussed in the assembly and submitted as such to the pope.

3. Cf. *Comm.* 14 (1982), p. 180.
4. Cf. E. CORECCO, "Parlamento ecclesiale o diaconia sinodale?," in *Communio* 1 (1972), p. 35.
5. JOHN PAUL II, "Discurso," April 20, 1983, in *Insegnamenti di Giovanni Paolo II*, VI, 1 (1983), p. 1101.

In view of these difficulties, a conviction developed that the synod should maintain an "internal" function, an informative and auxiliary role to the primatial office, which would be limited more to intervention with questions and proposals on matters referred to them, than to necessarily submissions of exhaustive, conclusive statements. This reconsideration of the actual objectives and of the meaning of synodal sessions has not only promoted the activity of the various assemblies, but it has also progressively reinforced the ecclesiastical function of the institution and its incisive influence on the interventions of the pontifical magisterium (cf. commentary on c. 347).

344 **Synodus Episcoporum directe subest auctoritati Romani Pontificis, cuius quidem est:**

1° synodum convocare, quotiescumque id ipsi opportunum videatur, locumque designare ubi coetus habendi sint;
2° sodalium, qui ad normam iuris peculiaris eligendi sunt, electionem ratam habere aliosque sodales designare et nominare;
3° argumenta quaestionum pertractandarum statuere opportuno tempore ad normam iuris peculiaris ante synodi celebrationem;
4° rerum agendarum ordinem definire;
5° synodo per se aut per alios praeesse;
6° synodum ipsam concludere, transferre, suspendere et dissolvere.

The synod of Bishops is directly under the authority of the Roman Pontiff, whose prerogative it is:

1° to convene the synod, as often as this seems opportune to him, and to designate the place where the meetings are to be held;
2° to ratify the election of those who, in accordance with the special law of the synod, are to be elected, and to designate and appoint other members;
3° at a suitable time before the celebration of the synod, to prescribe the outlines of the questions to be discussed, in accordance with the special law;
4° to determine the agenda;
5° to preside over the synod personally or through others;
6° to conclude, transfer, suspend or dissolve the synod.

SOURCES: *AS* III; OS (1966) 1, 17; OS (1969) 1

CROSS REFERENCES: —

COMMENTARY

Gian Piero Milano

The close subordination of the synod to the pope, from an organic and functional point of view, is emphasized with the enumeration of several prerogatives enjoyed by the pope regarding the place and time of the meeting, the choice of the form of the assembly (c. 345), the ratification of the election of members, and the right to designate a portion of the members. Of

particular relevance is the power to determine the agenda—typical in the dialectics between the so-called active subjects, that is, holders of decision-making power, and the advisory bodies. Nonetheless, it should be noted that with time, the practice of requesting from the bishops' conference an indication of some matters deemed worthy of consideration by a synodal assembly has been gradually introduced. This practice highlights even more the close relationship between the pope and the local bishops' authorities, and the function of exchange and of reciprocal communication (as a factor of *communio*) that, among other functions, occur in the synod. After the general assembly of 1980, the parameters developed by the Council of the General Secretariat (c. 348 § 1) and then submitted to the decision of the pope have assumed increasing importance in determining the agenda.

The prerogatives of the Pontiff also include those of presiding over the assembly (usually through one or more delegated presidents) and of deciding whether to conclude, transfer, suspend, or dissolve the synod. It is a principle taken from current discipline for the ecumenical council (cf. c. 338 § 1), but it does not find sufficient justification in this case, given the informational and advisory function entrusted to the synod.

In view of the extent of the pontifical prerogatives, doctrine has posed the question of whether to attribute to the pope the quality of being a member of the synodal assembly. A negative answer seems preferable. Above all, in general terms, because the consultative role always implies a "distinction" between the consultative body and the party benefiting from the consultation ("active"), even when the beneficiary of the advice is present in the consultative body (normally assuming the presidency). That presence does not imply co-participation in the exercise of the function, but rather is only a manifestation of the institutional bond between the advisory body and the active body, which is exactly what occurs in the case at hand.

On the practical level, the pope has never voted in a synod. What is more, the conclusions of the synod adopted with the participation of the pope in the deliberations would assume a formal force that would entirely exceed the normal powers of that body, becoming a collegial act in its strict sense. It is difficult to imagine a situation in which the pope's vote could align in a confrontation between the majority and the minority of the assembly, as occurs in the dynamics of collegial bodies.

From an ecclesiological point of view, were the hypothesis that the pope is a full-fledged member of the synod sustained, considerable problems would arise in distinguishing it from the ecumenical council, which is the only episcopal-based body acting (with deliberative power) at the level of the universal Church, of which the pope is a *pleno iure* member as well as the president.

This conclusion is also supported by a juridico-formal argument: the requirement, included in canon 343 that synod deliberations receive "rati-

fication" by the pope, an act that precisely presupposes a "distinction" with respect to the deliberative body. In fact, if the pope were a member of the synod for all intents and purposes, there would certainly be no need for ratification of synodal acts; the decisions would have already received his formal support.

Finally, and also for practical reasons, with the passage of time, an "internal" character has been conferred on the conclusions of the various assemblies (collected in *propositiones* or in *elenchi quaestionum*); that is, they were intended to be made known to the pope and not oriented directly to the universal Church, which emphasizes the pope's status as a *third* party to the assembly.

345 **Synodus Episcoporum congregari potest aut in coetum generalem, in quo scilicet res tractantur ad bonum Ecclesiae universae directe spectantes, qui quidem coetus est sive ordinarius sive extraordinarius, aut etiam in coetum specialem, in quo nempe aguntur negotia quae directe ad determinatam determinatasve regiones attinent.**

The synod of Bishops can meet in general assembly, in which matters are dealt with which directly concern the good of the universal Church; such an assembly is either ordinary or extraordinary. It can also meet in special assembly, to deal with matters directly affecting a determined region or regions.

SOURCES: *AS* IV; OS (1969) 4

CROSS REFERENCES: —

COMMENTARY

Gian Piero Milano

This canon describes in generic and diffuse terms the diverse types of assemblies: general (broken down into two categories: ordinary and extraordinary) and special. The first type is summoned every three years to handle matters of direct interest to the universal Church; the second is for handling matters limited to particular ecclesiastical regions. In view of the Code's silence on the difference between ordinary and extraordinary general assemblies, particular law—see *Order of the Celebration of the Synod of Bishops* (1966)—places the distinguishing element of the extraordinary assembly in the "urgency" of the matters to be dealt with. These are matters that, being of interest to the universal Church, require *expeditam definitionem*, to the extent that, precisely to make the preliminary proceedings more expeditious, the composition of that assembly is modified (the bishops' conferences, instead of being represented by elective members, are represented by their respective presidents).[1]

It should be noted that these distinctions serve as guides, given that in the last analysis, it is within the discretion of the pope to determine whether the matters to be handled in the assemblies are universal or particular, or urgent. This discretion has been confirmed by various prece-

1. Cf. OS (1966) (constituting a type of application of the mp *SOE*, which instituted the synod of bishops), art. 5 § 2, 1°.

dents: the extraordinary assemblies of 1969 (summoned for a discussion of episcopal collegiality and of bishops' conferences) and 1985 (dedicated to the study of the changes occurring in the Church twenty years after Vatican II and the changes still being introduced) have certainly dealt with topics of interest for the universal Church, but not requiring an *expedita definitio*.

A subsequent type of assembly, not covered by regulatory norms or the Code, is the particular synod "created" by John Paul II and summoned on two occasions in 1980, with the Dutch and Ukrainian bishops, respectively.

It was dealt with in an untimely manner (as shown in the very uncertainty in the definition of such assemblies; while in the letter of convocation an *extraordinary* synod was spoken of,[2] John Paul II, writing to the cardinals on April 29, 1980[3] spoke of a *particular* assembly), which is strongly analogous with the special assembly, especially due to the predominantly local interest of the subjects under discussion. However, it is distinguished by its composition; in fact, while delegates of the local bishops' conferences—elected according to certain percentages—participate in special assemblies and in particular assemblies, all the bishops of the interested nations have participated. Additionally, on at least two occasions on which that assembly has met, it has exercised para-decisive powers, obviously supported by a subsequent pontifical act of approval and promulgation. In fact, the particular synod of the Dutch bishops dealt with matters related to the pastoral activity of the Church in the Netherlands; that of the Ukrainian bishops sprang from the appointment of the coadjutor, *cum iure successionis*, of the metropolitan of Lviv.

Regardless of opinions on this innovation, there is no doubt that it manifests the flexibility of the institution of the synod and the elasticity of its regulatory structure. At the same time, it elevates the "collegial methodologies" expressed in the synod constituting the privileged form of the exercise of episcopal *potestas* within the framework of the "living and active collegiality."[4]

2. Letter, March 1, 1980, in *AAS* 72 (1980), p. 674.
3. Cf. *AAS* 72 (1980), p. 647.
4. Cf. Speech given by JOHN PAUL II, April 28, 1980, in *AAS* 72 (1980), p. 646. Cf. G.P. MILANO, *Il sinodo dei vescovi* (Milan 1985), pp. 384ff.

346 **§ 1. Synodus Episcoporum quae in coetum generalem ordinarium congregatur, constat sodalibus quorum plerique sunt Episcopi, electi pro singulis coetibus ab Episcoporum conferentiis secundum rationem iure peculiari synodi determinatam; alii vi eiusdem iuris deputantur; alii a Romano Pontifice directe nominantur; quibus accedunt aliqui sodales institutorum religiosorum clericalium, qui ad normam eiusdem iuris peculiaris eliguntur.**

§ 2. Synodus Episcoporum in coetum generalem extraordinarium congregata ad negotia tractanda quae expeditam requirant definitionem, constat sodalibus quorum plerique, Episcopi, a iure peculiari synodi deputantur ratione officii quod adimplent, alii vero a Romano Pontifice directe nominantur; quibus accedunt aliqui sodales institutorum religiosorum clericalium ad normam eiusdem iuris electi.

§ 3. Synodus Episcoporum, quae in coetum specialem congregatur, constat sodalibus delectis praecipue ex iis regionibus pro quibus convocata est, ad normam iuris peculiaris, quo synodus regitur.

§ 1. The synod of Bishops meeting in ordinary general assembly is comprised, for the most part, of bishops elected for each assembly by the Bishops' Conferences, in accordance with the norms of the special law of the synod. Other members are designated according to the same law; others are directly appointed by the Roman Pontiff. Added to these are some members of clerical religious institutes, elected in accordance with the same special law.

§ 2. The synod of Bishops meeting in extraordinary general assembly for the purpose of dealing with matters which require speedy resolution, is comprised, for the most part, of bishops who, by reason of the office they hold, are designated by the special law of the synod; others are appointed directly by the Roman Pontiff. Added to these are some members of clerical religious institutes, elected in accordance with the same law.

§ 3. The synod of Bishops which meets in special assembly is comprised of members chosen principally from those regions for which the synod was convened, in accordance with the special law by which the synod is governed.

SOURCES: §1: *AS* V, VII, X, XII; OS (1966) 2, 5 §§1 et 4; OS (1969) 1, 2, 5 §§1 et 4

§2: *AS* VI; OS (1966) 5 §§2 et 4; OS (1969) 5 §2
§3: *AS* VII; OS (1966) 5 §3; OS (1969) 5 §§3 et 4

CROSS REFERENCES: —

COMMENTARY

Gian Piero Milano

For determining the participants in the various types of synods, the canon refers to special regulations.[1] Subsequently, some changes in general or rules of order have been introduced, albeit *per transennam*, new partial modifications. On the basis of these norms, the composition of the various assemblies can be specified under the following terms:

1. *Ordinary general assembly* (§ 1)

The following categories participate therein:

a) Patriarchs, major archbishops and metropolitans from the patriarchates of the Eastern Catholic Churches (see OS [1966], art. 5). The Eastern Code has also included other leaders who "Ecclesiis suis praesunt" (*CCEO* c. 174);

b) Bishops elected—an improper term, because there is a "presentation" of candidates to the pope for his ratification—by the national bishops' conferences according to given percentages, running from one for conferences of less than twenty-five members, to a maximum of four for conferences with more than one hundred members;

c) Bishops elected by multinational conferences. From an answer from the Pontifical Council for the Interpretation of Legislative Texts on October 10, 1991,[2] it can be inferred that the election—in cases b) and c)—can also devolve upon the bishops who, due to their age (for example, bishops emeriti) or for other reasons, are not part of the conference;

d) Ten representatives from clerical religious institutes elected by the union of superiors general;

e) The cardinal prefects of the dicasteries of the Roman Curia. In this regard, general reforms brought about by the Apostolic Constitution *Pastor bonus*, when, together with the congregations, other organizations (pontifical councils, tribunals, offices) were also introduced into the cate-

1. In the present case, see mp *AS* and OS (1966).
2. *AAS* 83 (1991), p. 1.

gory of dicasteries, the problem of the participation in the synod of their respective heads arose. In view of the uncertain formulation in current practice, I conclude that there is no reason for their presence in the synod unless they are invested with the dignity of cardinal. It is true—as Arrieta has so rightly emphasized[3]—that the cardinals' right to participate is not *ratione dignitatis*, but rather *ratione muneris*, such that they are present in the synod due to the specific responsibilities entrusted to them within the Curia (and owing to which, their opinions are especially appropriate in the assembly). However, I believe that the regulatory provision is unambiguous and, does not allow broad interpretations that, although they are reasonable and justified, could result in an imbalance in the curial component regarding the representatives of the local episcopates;

f) Some members directly appointed by the Roman Pontiff. For this category, the canon does not refer to particular law, which limits the number of these members to fifteen percent of the total participants. It could be inferred, therefore, (but it would be an extreme conclusion) that this percentage limit is no longer in force.

2. *Extraordinary general assembly* (§ 2)

The "expeditious" nature (cf. commentary on c. 345) of this extraordinary general assembly justifies the automatic manner in which some of its members are determined. Thus, the following persons participate in it:

a) The categories indicated in the previous section under letters a), c), and f); and also:

b) The presidents of the national or multinational bishops' conferences;

c) Three members of the clerical religious institutes appointed by the union of superiors general.

3. *Special assembly* (§ 3)

As can be gathered from the reference to particular law (*AS* X), the same members participate therein as in the ordinary general assembly, but they must belong to the regions or territories for which the synod has been summoned. According to particular law, three members of clerical religious institutes[4] and members directly appointed by the pope also participate (cf. *AS* X).

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3. Cf. J.I. ARRIETA, "Lo sviluppo istituzionale del sinodo dei vescovi," in *Ius Ecclesiae* 4 (1992), p. 204.
4. Cf. *AS* VII. Regarding the different types of assemblies, cf. J.I. ARRIETA, *El sínodo de los obispos* (Pamplona 1987), p. 213.

347 **§ 1. Cum synodi Episcoporum coetus a Romano Pontifice concluditur, explicit munus in eadem Episcopis aliisque sodalibus commissum.**

§ 2. Sede Apostolica post convocatam synodum aut inter eius celebrationem vacante, ipso iure suspenditur synodi coetus, itemque munus sodalibus in eodem commissum, donec novus Pontifex coetum aut dissolvendum aut continuandum decreverit.

§ 1. When the meeting of the synod of Bishops is concluded by the Roman Pontiff, the function entrusted in it to the bishops and other members ceases.

§ 2. If the Apostolic See becomes vacant after the synod has been convened or during its celebration, the meeting of the synod, and the function entrusted in it to the members, is by virtue of the law itself suspended, until the new Pontiff decrees either that the assembly is to be dissolved or that it is to continue.

SOURCES: §1: *AS* XI
§2: OS (1969) 17 §4

CROSS REFERENCES: —

COMMENTARY

Gian Piero Milano

1. *Development of synodal assemblies*

Paragraph 1 is limited to establishing how synodal functions are terminated at the conclusion of the assemblies. Taking into account the particular norms, only the offices indicated in canon 348 should be assumed.

The Code makes no reference to the concrete development of the synodal assemblies, the procedure of which is regulated by particular law and various *explicationes* dictated on the occasion of the various assemblies and subsequently updated in practice. In order to discuss the essential points of the development of the synodal projects, we can distinguish three phases:

a) *Preparatory phase*

This phase is marked by the procedures for appointing the various members as discussed in canon 346. Simultaneously, the Council of the

Secretariat proceeds to the preparation of the *lineamenta*, constituting the first draft of the matters to be discussed in the synod, which are sent to the attention of all those having an urgent interest in the assembly (Roman Curia, Eastern synods of bishops, bishops' conferences, unions of superiors general). On the basis of the suggestions and remarks sent by these organizations, the Council of the Secretariat, with the collaboration of the experts, draws up the *instrumentum laboris*, an orientation document developing the synodal topics with all their ramifications.

b) *Assembly phase*

This phase is developed under the guidance of the delegate presidents who are appointed by the pope. The presidents, invested with the office at the beginning of the general congregations, chair the synod with the power to direct the debate. This phase begins with the reading of the Official Report, a document prepared by a bishop appointed by the pope when the assembly is convoked (OS [1966], 28). Then discussion is opened on the content of the *relatio*, according to an order of intervention established by the General Secretariat. If the topics discussed should need any clarification or need to be examined in depth, the delegate presidents, with the approval of the pope, may institute "study committees," composed of synod Fathers elected by the assembly according to the majorities established in canon 101.[1]

At the conclusion of this phase, discussion may be supplemented by intervention of the Fathers in the form of a request for clarification or further inquiry from the special secretary (an expert appointed by the pope who follows the assemblies and collaborating directly with the delegate presidents and the Secretary General) or the relator.[2] The reporter summarizes the matters that arose during the discussions and includes the most important points in an *elenchus quaestionum*, which will later be submitted for subsequent in-depth discussion in the *circuli minores*. In these smaller groups—divided according to language and to which the Fathers freely ascribe—full and in-depth discussions take place without any formal or procedural rules. During the course of these *circuli minores*, the thesis takes form, later to be presented to the plenary assembly by the relators of the various linguistic *circuli* in the form of *propositiones*, and these will constitute the objects of the last phase of discussions.

The conclusion of the work of the *circuli minores* marks the beginning of the last of the assembly phases, which imposes certain responsibilities on the Fathers, in addition to the discussions: the election to renew the Council of the Secretariat for the following triennium and the vote to approve the synodal documents. In the drafting of the synodal documents—inspired in the debates and in the directions arising from them—

1. Cf. OS (1969), 8–9.
2. Cf. ibid., 12.

the relator may be assisted by the special secretary and by some Fathers elected by the assembly.

For this vote, by which the purpose of the synod becomes a reality, the rules require different majorities, depending on whether a motion or a document is being approved or rejected. In the first case, a two-thirds majority is required;[3] in the latter, a simple majority of the voters is sufficient.

Votes are cast in one of three ways: *placet*, *non placet*, or *placet iuxta modum*, with the obligation for anyone casting a *modum* vote to submit in writing the content of the suggested amendment. This initial vote opens a subsequent process of redrafting the text according to the *modi*, which concludes with the vote on the proposed amendments and the final text in the assembly.

It is worth pausing here for a brief examination of the final documents, given that they have been the center of more than a few controversies and difficulties.

First, it must be clarified that there are no references in the rules from which to infer the typical characteristics of these acts in which the fruit of the assembly's work is expressed; the "answer" is for the synod to receive its opinion from the pope.

With respect to the stylistic and literary aspects, these documents may at times be written in the form of propositions or theses; others in the form of calls or messages, statements, exhortations, or as true and proper documents duly structured and developed. It is a choice based in part on the nature of the material dealt with and in part on the assembly's preference.

More difficult is the question of the juridico-formal elements; that is, the relevance *ad extra* of the documents and the subject that becomes their source of production. After a slow and varied evolution, during the course of which the competence of the synod to issue conclusive documents intended for the universal Church, and as such endowed with their own complexity and thoroughness, was considered, the practice has culminated in a more cautious approach. In general, the synods now limit themselves to approving a series of *propositiones*—acts of internal relevance—sent directly to the pope and intended to request his subsequent reflection. After the Synod of 1985, they proceeded to the drafting of a *Relatio finalis*, approved in the aula with votes on its various points that were then sent to the pope.

This evolution, far from diminishing the institutional role of the synod, has enhanced its practical relevance. In fact, more than a few recent interventions by the pontifical magisterium have directly influenced synodal conclusions; and what is more, they have been drawn up entirely

3. Cf. OS (1969), 24.

within the Council of the Secretriat. At the crux of this process are the interventions of the pope that followed the Synods of 1984 (Apostolic Exhortation *Reconciliatio et paenitentia*, December 2, 1984), 1987 (Apostolic Exhortation *Christifideles laici*, December 30, 1988) and 1990 (Apostolic Exhortation *Pastores dabo vobis*, March 25, 1992). These documents, endowed with formal pontifical authority, are significantly entitled "post-synodal exhortations," precisely to highlight the intimate relationship between the primatial intervention and the synodal assembly.

c) *Concluding acts*

In addition to the documents of which we have spoken, during the conclusive phase or, better termed, the post-synodal proceedings, the *Relatio circa labores peractos* is drafted by the secretary general with the assistance of the special secretaries. This document describes the work of the assembly on the various topics examined and the conclusions formulated by the participants. That document, intended for the pope's information, is of great importance, because it constitutes the only official source of detailed information on all the phases and events characterizing the work of the synod.

There are two bodies not mentioned in the Code, which are situated outside of the normal dynamics of the assembly, yet play a highly sensitive role for which they deserve at least brief mention: they are the *Commissio querelarum*[4] and the *Coetus notitiis circa synodum vulgandis*.[5]

The first is a type of internal tribunal with general competence, but with merely instructive functions, because all disputes submitted to it for its consideration must then be sent on to the pope for his decision. It is composed of three synodal Fathers appointed by the pope at the start of each assembly.

The second type acts as a press office and was established after some mishaps had occurred with the media, in order to assure the accurate and truthful circulation of the news given to the public. It is composed of five members, two of which are appointed by the office of the president among the synodal Fathers, and the other three of which are determined *ratione muneris*. They are the secretary general, the president of the Pontifical Council for Social Communications, and the special secretary.

2. *Suspension of the synod during a vacancy of the Apostolic See*

Paragraph 2 contains a rule taken from the discipline dictated for the ecumenical council, although in this context, it has a different rationale.

4. Cf. OS (1969), 10.
5. Cf. OS (1969), 16.

While the presence of the pope in the council is essential for the proper existence of the assembly, when it is a synod, the pope is in the position of a *third party* (cf. commentary on c. 344). Therefore, it seems that the discipline concerning suspension and interruption of the synod when the Apostolic See is vacant is related to current general principles for all bodies and auxiliary offices of the primate (cf. *UDG* 1–26).

In the hypothetical situation of a resumption of the synod once the Roman See is filled, a practical problem could arise. In view of the regulations' silence in this regard, it does not seem doubtful that the members appointed by the Pontiff may be changed at the will of the new pope, taking into account the *intuitus personae* tying them to the Pontiff's decision. In my opinion, the same can be said about the delegate presidents (although obvious reasons of timeliness and image would advise in favor of a confirmation of those offices). On the other hand, there is no problem for the representatives of the other authorities, who must maintain their legitimization in order to be part of the assembly upon resumption of the work. The secretary general, given his permanent status, would also keep his office. However, he may be replaced at any time, given that his appointment is *ad nutum Pontificis*.[6]

6. Ibid., 11.

348 **§ 1. Synodi Episcoporum habetur secretaria generalis permanens, cui praeest Secretarius generalis, a Romano Pontifice nominatus, cuique praesto est consilium secretariae, constans Episcopis, quorum alii, ad normam iuris peculiaris, ab ipsa synodo Episcoporum eliguntur, alii a Romano Pontifice nominantur, quorum vero omnium munus explicit, ineunte novo coetu generali.**

§ 2. Pro quolibet synodi Episcoporum coetu praetera unus aut plures secretarii speciales constituuntur qui a Romano Pontifice nominantur, atque in officio ipsis commisso permanent solum usque ad expletum synodi coetum.

§ 1. There is to be a permanent general secretariat of the synod, presided over by a secretary general appointed by the Roman Pontiff. The Secretary is to have the assistance of a council of the secretariat, composed of Bishops, some elected by the synod of Bishops itself in accordance with the special law, others appointed by the Roman Pontiff. The function of all these persons ceases with the beginning of a new general assembly.

§ 2. For each assembly of the synod of Bishops there are one or more special secretaries who are appointed by the Roman Pontiff. They remain in office only until the end of the synod assembly.

SOURCES: § 1: *AS* XII; OS (1971) 11–13
§ 2: *AS* XII; OS (1971) 13

CROSS REFERENCES: —

COMMENTARY

Gian Piero Milano

This canon mentions the only permanent synodal office—the general secretariat, which, from a structural point of view, actually possesses the most important prerogatives, based on which it could be rightly considered the main reference point for each assembly as well as for the pope. It is composed of the secretary general and the Council of the Secretariat, which are the only bodies in operation after the conclusion of the assembly. In fact, the secretary general exercises his office for an unlimited period of time, *ad nutum Pontificia*. The Council of the Secretariat remains

in office for the entire period between one ordinary general assembly and the following one, thus generally for a three-year period.

1. *The secretary general*

With respect to the secretary general, the regulations assign him the duty to "execute the prescriptions or the specific mandates" of the pope and to keep him informed of everything related to synod activities.[1] Through the exercise of that office, he becomes the axis around which revolve the horizontal dynamics related to the activities of the preparation, coordination, and execution of the assembly, as well as the vertical dynamics related to the assembly's relationship with the pope.

Among the preliminary functions of the secretary general's area of competence are the sending of the letters of convocation and the agenda, as well as the sending of all the documents, instructions, and notices related to the assembly. It is also his duty to report the designation of the members appointed by the Pontiff to all interested parties and to receive from them the *relatio* of the members who are elected in order to monitor the election ratification procedure.

With regard to the coordination of the work of the assembly—of which the reading of the *Relatio circa labores peractos* by the Secretariat between one synod and the other is established as among his first acts—it is his duty to appoint the *adiutores*—ecclesiastics *scientia et prudentia praeditos*[2]—who will assist him in his various organizational duties. In the debate phase, he prepares the order of the interventions or the answers and, at the end of the discussions, receives the *vota scripta* from the Fathers and is responsible for the printing of the various proposed *modi*. He collects, orders, and maintains all records and documents. It is his duty to report the verbatim minutes of the sessions of each assembly to all of the individuals as indicated in the regulations.

In summary, with the collaboration of the special secretary, he prepares a descriptive *relatio* of the work with the various topics examined and with the conclusions adopted by the Fathers. This function is highly important, given that the *relatio*—which is later submitted to the pope—is the only report on the action of the synod with official value that is submitted to the supreme authority.

1. Cf. OS (1969), 11.
2. Cf. OS (1969), 11 § 6.

Therefore, there is evidently a relevant autonomy of the secretary regarding the assembly, more emphasized perhaps by the fact that it is the only executive body of the synodal decisions, and inasmuch as he has "exsequi ea quae Synodus episcoporum ipsi mandaverit."[3]

These functions place the secretary general in a unique position that cannot be easily classified in a description of the hierarchical subordination with respect to the other bodies, other than the pope himself (through the Secretary of State).

2. *The Council of the Secretariat*

The Council of the Secretariat, covered in the second part of this canon, is a body initially created (Order of the Celebration of the Synod of Bishops [1971], 6) with an auxiliary and collaborative function with the secretary general, but its authority in the life of the synodal institution has progressively expanded, and at the same time it has been assuming highly relevant authority.

According to the canon, the Council is at the disposal (*praesto*) of the secretary general. In fact, the authority of its fifteen members—four-fifths of whom are elected by the ordinary general assembly (with the majorities required by c. 119) and one-fifth directly by the pope—as major representatives of the episcopate worldwide, particularly qualify this body, as John Paul II affirmed, as "the authorized means of transmission of the authentic will of the assembly."[4] In addition, the Council has been entrusted with duties of increasingly greater importance, among which the most relevant is the preparation of the post-synodal document. This act, although it is formally attributed to the authority of the pope (cf. commentary on c. 347), in substance collects and develops the conclusions of the synodal assembly.

The Council also participates in the preparation of the *lineamenta* and the *instrumentum laboris* (cf. commentary on c. 347), as well as in other phases related to the organization of the assembly to which they are assigned by the secretary general or directly by the pope. To this effect, regulations establish that the conciliar meetings must be called by the secretary general at least twice per year and whenever else that he deems it advisable.[5]

There is a sensitive matter regarding how long the Council remains in office. The canon introduces a substantial change with respect to the

3. Cf. OS (1969), 11.

4. JOHN PAUL II, Speech to the Council of the Secretariat, February 18, 1984: cf. G. CAPRILE, *Il sinodo dei vescovi* (Vatican City 1987), p. 4.

5. Cf. OS (1971), 13.

regulations. In fact, while the rescript that instituted the Council (on August 20, 1971) stated that its members would remain in office until "in sequenti generali Synodo novum Consilium constituatur," the provision of the Code makes the dissolution of the body coincide with the beginning of the general assembly *(ineunte novo coetu generali)*. This innovation introduces consequences of no small importance. The discipline established by the regulations allowed a certain continuity and a type of "transmission of assigned matters" between the outgoing Council and the incoming Council, with an opportunity for the exchange of information and experiences. This continuity could be of particular use to all those in the incoming Council and also benefit the assembly in progress. Now that possibility has been eliminated by the principle established in the canon, which prescribes the nonexistence of the Council of the Secretariat during the entire period in which the synod is meeting, because the outgoing Council ceases at the start of the assembly and the incoming Council is elected at the conclusion.

Therefore, this body has no connection time-wise with the synodal assembly. On the contrary, it is intended to act during the period between one ordinary general synod and the following one. It follows that in the case of a vacancy in the Roman See, the general principle established in canon 347 § 2 whereby all synodal offices are suspended awaiting the decision of the new Pontiff, should not be applied to this body. The Council must maintain its functional continuity, in the same way as the secretary general.

It is worth mentioning, to stress the importance acquired by the Council of the Secretariat, the plan to which Paul VI referred in his time (Allocution, March 24, 1973), which consisted of calling the members of the Council of the Secretariat of the synod to form part of the electoral body of the Pontiff, together with the College of Cardinals. According to this plan, the secretary general of the synod would have to perform the office of the assistant secretary of the College of Cardinals in the conclave. In the intent of the one who proposed this, it would have highlighted the close relationship between the primatial office and the College of Bishops.

The plan did not go forward, for reasons unknown. Judging by the critical interventions that took place at that time, it may be that the reasons were not unrelated to the need to avoid employing the universal character of the primatial office and to keep it closely linked to the particular Roman Church and to its clergy, that is, the College of Cardinals. Also influencing this decision at that time was the fear of subsequent misunderstandings in the ecumenical dialogue, notably divergent precisely with regard to the qualification for the Petrine office and to its "universality," which would have been emphasized by having the representatives of the episcopate, elected by the synod, participate in the conclave.

3. *Special secretaries*

The provisions of paragraph 2 refer to the office of the special secretaries, appointed by the pope for each of the topics included in the assembly agendas, in view of their specific technical competence. In the exercise of their function, they collaborate closely with the secretary general as well as with the official *relatores* in the preparation of the documents and reports of the synod. They also handle the resolution of technical issues, which also can be interpreted by the Fathers during the discussions of the general assembly. At the conclusion of the general assembly, they collaborate with the secretary general in the drafting of the *Relatio circa labores peractos* (cf. commentary on c. 347), which is later submitted to the pope. In the performance of their office, they may have the assistance of the *adiutores* appointed by the Pontiff, who leave office at the end of the synod for which they were appointed.

CAPUT III
De S.R.E. Cardinalibus

CHAPTER III
The Cardinals of the Holy Roman Church

349 **S. R. E. Cardinales peculiare Collegium constituunt, cui competit ut electioni Romani Pontificis provideat ad normam iuris peculiaris; Cardinales item Romano Pontifici adsunt sive collegialiter agendo, cum ad quaestiones maioris momenti tractandas in unum convocantur, sive ut singuli, scilicet variis officiis, quibus funguntur, eidem Romano Pontifici operam praestando in cura praesertim cotidiana universae Ecclesiae.**

The Cardinals of the Holy Roman Church constitute a special College, whose prerogative it is to elect the Roman Pontiff in accordance with the norms of a special law. The Cardinals are also available to the Roman Pontiff, either acting collegially, when they are summoned together to deal with questions of major importance, or acting individually, that is, in the offices which they hold in assisting the Roman Pontiff especially in the daily care of the universal Church.

SOURCES: c. 230; Ioannes PP. XXIII, mp *Cum gravissima*, 15 apr. 1962 (*AAS* 54 [1962] 256–258); *RPE* 33

CROSS REFERENCES: cc. 115 § 2, 334

COMMENTARY

Carl Gerold Fürst

The cardinals of the Holy Roman Church constitute a special college, called in other times the Senate of the Roman Pontiff. It is a *universitas personarum collegialis*, within the meaning of canon 115 § 2, presided

over by the dean (c. 352 § 1) and governed by its own statutes, which nonetheless apparently still have not been issued.

The first function of cardinals, at the level of the universal Church, is electoral: the election of the Roman Pontiff.[1] However, no strict equivalence is given among the members of the College of Cardinals and the members of the electoral body, inasmuch as cardinals who are over age eighty lose the right to vote.[2]

The consultative function of cardinals with respect to the Roman Pontiff (cf. also c. 334) is carried out collegially, in consistory (cf. c. 353, secret consistory or ordinary public consistory, extraordinary consistory; *Pastor bonus* 23, plenary consistory or plenary congregation), as well as individually, in the case of cardinal prefects, presidents, or members of the dicasteries or of other institutes of the Roman Curia or the Vatican City State.

1. Cf. JOHN PAUL II, Ap. Const. *Universi Dominici Gregis*, February 22, 1996, in *AAS* 88 (1996), pp. 305–343; especially p. 307, no. 33, and p. 321.
2. MP *Ingravescentem aetatem*, November 21, 1970, II, no. 2, in *AAS* 62 (1970), pp. 810–813. Also cf. *UDG* 33.

FÜRST

350 **§ 1. Cardinalium Collegium in tres ordines distribuitur: episcopalem, ad quem pertinent Cardinales quibus a Romano Pontifice titulus assignatur Ecclesiae suburbicariae, necnon Patriarchae orientales qui in Cardinalium Collegium relati sunt; presbyteralem et diaconalem.**

§ 2. Cardinalibus ordinis presbyteralis ac diaconalis suus cuique titulus aut diaconia in Urbe assignatur a Romano Pontifice.

§ 3. Patriarchae orientales in Cardinalium Collegium assumpti in titulum habent suam patriarchalem sedem.

§ 4. Cardinalis Decanus in titulum habet dioecesim Ostiensem, una cum alia Ecclesia quam in titulum iam habeat.

§ 5. Per optionem in Consistorio factam et a Summo Pontifice approbatam, possunt, servata prioritate ordinis et promotionis, Cardinales ex ordine presbyterali transire ad alium titulum et Cardinales ex ordine diaconali ad aliam diaconiam et, si per integrum decennium in ordine diaconali permanserint, etiam ad ordinem presbyteralem.

§ 6. Cardinalis ex ordine diaconali transiens peroptionem ad ordinem presbyteralem, locum obtinet ante omnes illos Cardinales presbyteros, qui post ipsum ad Cardinalatum assumpti sunt.

§ 1. The College of Cardinals is divided into three orders: the episcopal order, to which belong those Cardinals to whom the Roman Pontiff assigns the title of a suburbicarian Church, and eastern-rite Patriarchs who are made members of the College of Cardinals; the presbyteral order, and the diaconal order.

§ 2. Cardinal priests and Cardinal deacons are each assigned a title or a deaconry in Rome by the Roman Pontiff.

§ 3. Eastern Patriarchs within the College of Cardinals have their patriarchal see as a title.

§ 4. The Cardinal Dean has the title of the diocese of Ostia, together with that of any other Church to which he already has a title.

§ 5. By a choice made in Consistory and approved by the Supreme Pontiff, Cardinal priests may transfer to another title; Cardinal deacons may transfer to another deaconry and, if they have been a full ten years in the diaconal order, to the presbyteral order: priority of order and of promotion is to be observed.

§ 6. A Cardinal who by choice transfers from the diaconal to the presbyteral order, takes precedence over all Cardinal priests who were promoted to the Cardinalate after him.

SOURCES: § 1: c. 231 § 1; Ioannes PP. XXIII, mp *Ad suburbicarias*, 10 mar. 1961 (*AAS* 53 [1961] 198); Ioannes PP. XXIII, mp *Suburbicariis sedibus*, 11 apr. 1962, I (*AAS* 54 [1962] 253–256); Paulus PP. VI, mp *Ad purpuratorum Patrum*, 11 feb. 1965, I (*AAS* 57 [1965] 295)
§ 2: c. 231 § 2
§ 3: Paulus PP. VI, mp *Ad purpuratorum Patrum*, 11 feb. 1965 (*AAS* 57 [1965] 295–296)
§ 4: c. 236 § 4
§ 5: c. 236 § 1; CodCom Resp., 29 maii 1934 (*AAS* 26 [1934] 493)
§ 6: c. 236 § 2; CodCom Resp., 29 maii 1934 (*AAS* 26 [1934] 493)

CROSS REFERENCES: c. 351 § 1

COMMENTARY

Carl Gerold Fürst

Although all cardinals must be ordained bishops (c. 351 § 1), for historical reasons the College of Cardinals is divided into three orders:

1. The episcopal order, to which belong the six bishops holding one of the titles of the seven suburbicarian dioceses: Albano, Frascati, Palestrina, Porto and Santa Rufina, Sabina and Poggio Mirteto, Velletri, and Ostia. This last title is assumed by the dean, while he keeps the title he had before being elected. The patriarchs of the Eastern Catholic Churches, who have their patriarchal see as a title, are also part of this order.[1]

2. The presbyteral order, the members of which—in general, diocesan bishops—receive as a title one of the Roman presbyteral churches.

3. The diaconal order, the members of which receive as a title one of the Roman deaconries.

The right to choose to transfer from the presbyteral order to the episcopal order has been abolished.[2] Cardinals of the presbyteral order do

1. PAUL VI, mp *Ad purpuratorum patrum*, February 11, 1965, in *AAS* 57 (1965), pp. 295–297; cf. nos. I and V.
2. JOHN XXIII, mp *Ad suburbicarias dioeceses*, March 10, 1961, in *AAS* 53 (1961), p. 198.

have the right to transfer to another title within the presbyteral order or to the diaconal order and the right to transfer to another deaconry or, after ten years in the diaconal order, to the presbyteral order. This is the only case in which the Code alludes to the legal institution of the option (acquisition of a right proper by declaration, which in this case has to be approved by the Roman Pontiff).

351 **§ 1. Qui Cardinales promoveantur, libere a Romano Pontifice seliguntur viri, saltem in ordine presbyteratus constituti, doctrina, moribus, pietate necnon rerum agendarum prudentia egregie praestantes; qui nondum sunt Episcopi, consecrationem episcopalem recipere debent.**

§ 2. Cardinales creantur Romani Pontificis decreto, quod quidem coram Cardinalium Collegio publicatur; inde a publicatione facta officiis tenentur atque iuribus gaudent lege definitis.

§ 3. Promotus ad cardinalitiam dignitatem, cuius creationem Romanus Pontifex annuntiaverit, nomen autem in pectore sibi reservans, nullis interim tenetur Cardinalium officiis nullisque eorum gaudet iuribus; postquam autem a Romano Pontifice eius nomen publicatum fuerit, iisdem tenetur officiis fruiturque iuribus, sed iure praecedentiae gaudet a die reservationis in pectore.

§ 1. Those to be promoted Cardinals are men freely selected by the Roman Pontiff, who are at least in the order of priesthood and are truly outstanding in doctrine, virtue, piety and prudence in practical matters; those who are not already Bishops must receive episcopal ordination.

§ 2. Cardinals are created by decree of the Roman Pontiff, which in fact is published in the presence of the College of Cardinals. From the moment of publication, they are bound by the obligations and they enjoy the rights defined in the law.

§ 3. A person promoted to the dignity of Cardinal, whose creation the Roman Pontiff announces, but whose name he reserves *in petto*, is not at that time bound by the obligations nor does he enjoy the rights of a Cardinal. When his name is published by the Roman Pontiff, however, he is bound by these obligations and enjoys these rights, but his right of precedence dates from the day of the reservation *in petto*.

SOURCES: § 1: c. 232 § 1; Ioannes PP. XXIII, mp *Cum gravissima*, 15 apr. 1962 (*AAS* 54 [1962] 256–258)
§ 2: c. 233 § 1
§ 3: c. 233 § 2

CROSS REFERENCES: cc. 349, 967 § 1, 1242, 1405 § 1, 2°, 1558 § 2

COMMENTARY

Carl Gerold Fürst

Cardinals are freely appointed by the Roman Pontiff; however, it does not appear that as of now the privilege granted to the patriarchs of Lisbon by Clement XII, with the Bull *Inter praecipuas*, of December 17, 1737, has been abolished, by virtue of which they are promoted to the dignity of cardinal in the first consistory after their election and provision.

Those who are going to be *created* (*creare* is the technical term in Latin indicating the appointment of a cardinal), must at least be presbyters. Those who are not yet bishops must receive episcopal ordination. This has been required since John XXIII,[1] but this norm is occasionally dispensed from. Those who are not diocesan bishops lose their titular diocese when they are appointed cardinals.

With the indirect exception of cardinals who are bishops and patriarchs (determined by the fixed number of the episcopal titles and of the patriarchal churches), there is no longer a pre-established number of the members of the College of Cardinals. On the other hand, the norm of *Romano Pontifici eligendo* 33 is valid, whereby the number of cardinal electors—those that are not over age eighty—shall not exceed 120.

Cardinals have their rights from the time of the publication of the papal decree of their creation before the College of Cardinals, normally (but not necessarily) summoned in secret consistory. A cardinal created *in pectore* (that is, without his name being published) possesses the rights and obligations of a cardinal only after publication of his name, but the precedence is attributed to him from the date of creation *in pectore*.

The Code cites the following as the specific rights of cardinals:

1. the right to elect the Roman Pontiff (c. 349);

2. when outside of Rome or by chance outside of their own dioceses, exemption from the power of governance of the diocesan bishop of the place where they are (c. 357 § 2);

3. the right to be tried only by the Roman Pontiff (c. 1405 § 1, 2);

4. the faculty to hear confessions from the faithful throughout the world (c. 967 § 1);

5. the right to select the location where they will be heard as witnesses (c. 1558 § 2);

6. the right to be buried in a church (c. 1242);

1. Mp *Cum gravissima*, April 15, 1962, in *AAS* 54 (1962), pp. 256–258.

Additionally, they are reserved certain rights of the offices of the Curia.

The "ceremonial" rights of cardinals are found—since the *Norme Ceremoniali per gli E.mi Signori Cardinali,* of the Sacred Ceremonial Congregation of 1943, among others, has already been abolished—especially in the Instruction of the Secretariat of State of March 31, 1969: "Circa vestes, titulos et insignia generis cardinalium, episcoporum et praelatorum ordine minorum."[2]

2. *AAS* 61 (1969), pp. 334–340. Dated March 18, 1999, the Secretariat of State published an "Elenchus privilegiorum et facultatum S.R.E. Cardinalium in re Liturgica et canonica": cf. *Comm* 31 (1999), pp. 11–13.

352 **§ 1. Cardinalium Collegio praeest Decanus, eiusque impediti vices sustinet Subdecanus; Decanus, vel Subdecanus, nulla in ceteros Cardinales gaudet potestate regiminis, sed ut primus inter pares habetur.**

§ 2. Officio Decani vacante, Cardinales titulo Ecclesiae suburbicariae decorati, iique soli, praesidente Subdecano si adsit, aut antiquiore ex ipsis, e coetus sui gremio unum eligant qui Decanum Collegii agat; eius nomen ad Romanum Pontificem deferant, cui competit electum probare.

§ 3. Eadem ratione de qua in § 2, praesidente ipso Decano, eligitur Subdecanus; Subdecani quoque electionem probare Romano Pontifici competit.

§ 4. Decanus et Subdecanus, si in Urbe domicilium non habeant, illud ibidem acquirant.

§ 1. The Dean presides over the College of Cardinals. When he is unable to do so, the sub-Dean takes his place. The Dean, or the sub-Dean, has no power of governance over the other Cardinals, but is considered as first among equals.

§ 2. When the office of Dean is vacant, those Cardinals who have a suburbicarian title, and only those, under the presidency of the sub-Dean if he is present, or of the oldest member, elect one of their number to act as Dean of the College. They are to submit his name to the Roman Pontiff, to whom it belongs to approve the person elected.

§ 3. In the same way as set out in § 2, the sub-Dean is elected, with the Dean presiding. It belongs to the Roman Pontiff to approve also the election of the sub-Dean.

§ 4. If the Dean and sub-Dean do not already have a domicile in Rome, they are to acquire it there.

SOURCES: § 1: c. 237 § 1; Paulus PP. VI, mp *Sacro Cardinalium Consilio*, 26 feb. 1965, V (*AAS* 57 [1965] 297)
§ 2: Paulus PP. VI, mp *Sacro Cardinalium Consilio*, 26 feb. 1965, II (*AAS* 57 [1965] 297)
§ 3: Paulus PP. VI, mp *Sacro Cardinalium Consilio*, 26 feb. 1965, III (*AAS* 57 [1965] 297)
§ 4: c. 238 §§ 1 et 2; Paulus PP. VI, mp *Sacro Cardinalium Consilio*, 26 feb. 1965, I (*AAS* 57 [1965] 296–297)

CROSS REFERENCES: —

COMMENTARY

Carl Gerold Fürst

Neither the dean nor the sub-dean has power over other cardinals; however, they do have precedence over them.[1] Since Paul VI,[2] the dean and the sub-dean are no longer necessarily the first and second in seniority in the office, respectively, of cardinals of the episcopal order, but rather are elected by and from among them. It is the Roman Pontiff's responsibility to approve the election.

The dean as well as the sub-dean, due to their functions, must have domicile in Rome.

1. *Ad purpuratorum patrum*, no. IV.
2. Mp *Sacro Cardinalium consilio*, February 26, 1965, in *AAS* 57 (1965), pp. 296–297.

353 § 1. **Cardinales collegiali actione supremo Ecclesiae Pastori praecipue auxilio sunt in Consistoriis, in quibus iussu Romani Pontificis eoque praesidente congregantur; Consistoria habentur ordinaria aut extraordinaria.**

§ 2. **In Consistorium ordinarium, convocantur omnes Cardinales, saltem in Urbe versantes, ad consultationem de quibusdam negotiis gravibus, communius tamen contigentibus, aut ad actus quosdam maxime sollemnes peragendos.**

§ 3. **In Consistorium extraordinarium, quod celebratur cum peculiares Ecclesiae necessitates vel graviora negotia tractanda id suadeant, convocantur omnes Cardinales.**

§ 4. **Solum Consistorium ordinarium, in quo aliquae sollemnitates celebrantur, potest esse publicum, cum scilicet praeter Cardinales admittuntur Praelati, legati societatum civilium aliive ad illud invitati.**

§ 1. Cardinals assist the Supreme pastor of the Church in collegial fashion particularly in Consistories, in which they are gathered by order of the Roman Pontiff and under his presidency. Consistories are either ordinary or extraordinary.

§ 2. In an ordinary Consistory all Cardinals, or least those who are in Rome, are summoned for consultation on certain grave matters of more frequent occurrence, or for the performance of especially solemn acts.

§ 3. All Cardinals are summoned to an extraordinary Consistory, which takes place when the special needs of the Church and more serious matters suggest it.

§ 4. Only an ordinary Consistory in which certain solemnities are celebrated, can be public, that is when, in addition to the Cardinals, Prelates, representatives of civil states and other invited persons are admitted.

SOURCES: —

CROSS REFERENCES: —

COMMENTARY

Carl Gerold Fürst

Abandoning the traditional classification of consistories—that is, meetings of cardinals with the Roman Pontiff—as secret, semi-public, and public, the Code now distinguishes between ordinary secret consistories and public ordinary consistories (which in the case of the official petitions for canonizations are celebrated as a *consistorium unicum*), in addition to extraordinary consistories, which are always secret. Cardinals who are members of the dicasteries of the Curia may be summoned to a "plenary consistory" (*PB* 23).

For the ordinary consistories, at least the cardinals who at the time of the summons are in Rome must be summoned to discuss important albeit normal matters, or to perform acts of extraordinary solemnity. Generally, the ordinary consistories are secret, that is, reserved for cardinals, presided over by the Pope. Only on the occasion of solemnities may the consistory be public, that is, with the participation of persons other than cardinals.

In the case of special needs of the Church or in order to handle particularly grave matters, all cardinals must be summoned to the extraordinary consistories.

354 **Patres Cardinales dicasteriis aliisve institutis permanentibus Romanae Curiae et Civitatis Vaticanae praepositi, qui septuagesimum quintum aetatis annum expleverint, rogantur ut renuntiationem ab officio exhibeant Romano Pontifici qui, omnibus perpensis, providebit.**

Cardinals who head the departments and other permanent sections of the Roman Curia and of Vatican City, who have completed their seventy-fifth year, are requested to offer their resignation from office to the Roman Pontiff, who will consider all the circumstances and make provision accordingly.

SOURCES: Paulus PP. VI, mp *Ingravescentem aetatem,* 21 ian. 1970, I (*AAS* 62 [1970] 811)

CROSS REFERENCES: cc. 401 § 1, 538 § 3

COMMENTARY

Carl Gerold Fürst

Similarly to what occurs in the case of diocesan bishops (c. 401 § 1) and the case of parish priests (c. 538 § 3), cardinals who are prefects or presidents of the dicasteries or of other permanent bodies of the Roman Curia or of Vatican City are asked to offer their resignation from office to the Roman Pontiff when they have completed their seventy-fifth year. This was already established by Paul VI,[1] and now again by John Paul II (*PB* 5 § 2).

Additionally, cardinals who are age eighty are no longer members of the dicasteries or of the bodies to which they belonged (*PB* 5 § 2)[2] and they lose the right to participate in the election of the Roman Pontiff (*UDG* 33).[3]

Nonetheless, it is worth emphasizing that all of this does not affect one's actual membership in the College of Cardinals, but merely certain functions of a particular cardinal.

1. Mp *Ingravescentem aetatem*, November 21, 1970, no. I, in *AAS* 62 (1970), pp. 810–813.
2. The same norm was in force under Paul VI: cf. ibid., II, 2.
3. Ibid.

355 **§ 1. Cardinali Decano competit electum Romanum Pontificem in Episcopum ordinare, si electus ordinatione indigeat; impedito Decano, idem ius competit Subdecano, eoque impedito, antiquiori Cardinali ex ordine episcopali.**

§ 2. Cardinalis Proto-diaconus nomen novi electi Summi Pontificis populo annuntiant; item pallia Metropolitis imponit eorumve procuratoribus tradit, vice Romani Pontificis.

§ 1. It belongs to the Cardinal Dean to ordain the elected Roman Pontiff a bishop, if he is not already ordained. If the Dean is prevented from doing so, the same right belongs to the sub-Dean or, if he is prevented, to the senior Cardinal of the episcopal order.

§ 2. The senior Cardinal Deacon announces the name of the newly elected Supreme Pontiff to the people. Acting in place of the Roman Pontiff, he also confers the pallium on Metropolitan bishops or gives the pallium to their proxies.

SOURCES: § 1: c. 239 § 2; Pius PP. XII, Ap. Const. *Vacantis Apostoticae Sedis*, 8 dec. 1945, 107 (*AAS* 38 [1946] 98); *RPE* 90b
§ 2: c. 239 § 3

CROSS REFERENCES: c. 437 § 1

COMMENTARY

Carl Gerold Fürst

Two norms given by Paul VI in Apostolic Constitution *Romano Pontifici eligendo* and kept in Apostolic Constitution *Universi dominici gregis* are repeated in this canon:

1. It is the very ancient right of the dean of the College of Cardinals (historically as the bishop of Ostia) to ordain any Roman Pontiff elect who has not already been ordained a bishop. In the event that the dean is prevented from doing so, he is substituted by the sub-dean or, if the sub-dean is also prevented from doing so, by the senior cardinal of the episcopal order who is not prevented from doing so (*UDG* 90).

2. Another very ancient right of the senior cardinal deacon (of the first in the order of the cardinal deacons) is to announce the election of the new Roman Pontiff (*UDG* 89) with the traditional formula: "Nuntio

vobis gaudium magnum, habemus Papam, Eminentissimum ac Reverendissimum Dominum... qui sibi nomen imposuit..."

In addition, the canon also includes another very ancient right of the senior cardinal deacon: to confer the pallium on metropolitan archbishops, or deliver it to their proxies (cf. c. 437 § 1).

356 **Cardinales obligatione tenentur cum Romano Pontifice sedulo cooperandi; Cardinales itaque quovis officio in Curia fungentes, qui non sint Episcopi dioecesani, obligatione tenentur residendi in Urbe; Cardinales qui alicuius dioecesis curam habent ut Episcopi dioecesani, Urbem petant quoties a Romano Pontifice convocentur.**

Cardinals have the obligation of cooperating closely with the Roman Pontiff. For this reason, Cardinals who have any office in the Curia and are *not diocesan bishops*, are obliged to reside in Rome. Cardinals who are in charge of a diocese as diocesan bishops, are to go to Rome whenever summoned by the Roman Pontiff.

SOURCES: c. 238; *REU* proemium

CROSS REFERENCES: —

COMMENTARY

Carl Gerold Fürst

This canon debunks the fiction that all cardinals are Roman clergy, and therefore are obligated *per se* to reside *in Curia*. This fiction was still upheld, at least in part, by canon 238 of the 1917 Code, and was formally abolished by Paul VI only for the patriarchs of the Eastern Catholic Churches.[1]

At present, the obligation to reside in or come to Rome, except for the dean and the sub-dean, is explicitly related to the obligation to render close collaboration to the Roman Pontiff. So the obligation to reside in Rome only affects those cardinals having an office in the Curia who are not diocesan bishops. The rest are obligated to come to Rome only in the event that they are summoned by the Roman Pontiff.

1. *Ad purpuratorum patrum*, no. II.

357 § 1. Cardinales, quibus Ecclesia suburbicaria aut ecclesia in Urbe in titulum est assignata, postqnam in eiusdem venerunt possessionem, earundem dioecesium et ecclesiarum bonum consilio et patrocinio promoveant, nulla tamen in easdem potestate regiminis pollentes, ac nulla ratione sese in iis interponentes, quae ad earum bonorum administrationem, ad disciplinam aut ecclesiarum servitium spectant.

§ 2. Cardinales extra Urbem et extra propriam dioecesim degentes, in iis quae ad sui personam pertinent exempti sunt a potestate regiminis Episcopi dioecesis in qua commorantur.

§ 1. When a Cardinal has taken possession of a suburbicarian Church or of a titular Church in Rome, he is to further the good of the diocese or church by counsel and patronage. However, he has no power of governance over it, and he should not for any reason interfere in matters concerning the administration of its goods, or its discipline, or the service of the church.

§ 2. Cardinals living outside Rome and outside their own diocese, are exempt in what concerns their person from the power of governance of the bishop of the diocese in which they are residing.

SOURCES: § 1: c. 240 § 2; Ioannes PP. XXIII, mp *Suburbicariis sedibus*, 11 apr. 1962 (*AAS* 54 [1962] 253–256); Paulus PP. VI, mp *Ad hoc usque tempus*, 15 apr. 1969 I–III (*AAS* 61 [1969] 226–227)
§ 2: c. 239 § 1

CROSS REFERENCES: —

COMMENTARY

Carl Gerold Fürst

Along with the preceding canon, this canon also debunks the fiction that cardinals are Roman clergy. In accordance with the norm given by John XXIII for cardinals of episcopal order,[1] and later by Paul VI,[2] this canon confirms the abolition of all power of governance of cardinals in

1. Mp *Suburbicariis sedibus*, April 11, 1962, in *AAS* 54 (1962), pp. 253–256.
2. Mp *Ad hoc usque tempus*, April 15, 1969, in *AAS* 61 (1969), pp. 226–227.

their suburbicarian dioceses, titular churches, or deaconries, in which they only hold the "title" and certain honorary rights.

As for the rest, cardinals are expressly prohibited from interfering in the temporal or spiritual administration of their titular dioceses, titles, or deaconries.

Personally, cardinals are exempt from the power of governance exercised by another diocesan bishop.

358 **Cardinali, cui a Romano Pontifice hoc munus committitur ut in aliqua sollemni celebratione vel personarum coetu eius personam sustineat, uti "Legatus a latere," scilicet tamquam eius alter ego, sicuti et illi cui adimplendum concreditur tamquam ipsius "misso speciali" certum munus pastorale, ea tantum competunt quae ab ipso Romano Pontifice eidem demandantur.**

A Cardinal may be deputed by the Roman Pontiff to represent him in some solemn celebration or assembly of persons as a *Legatus a latere*, that is, as his alter ego; or he may, as a special emissary, be entrusted with a particular pastoral task. A Cardinal thus nominated is entitled to deal only with those affairs which have been entrusted to him by the Roman Pontiff himself.

SOURCES: c. 266; *SOE* I, 3

CROSS REFERENCES: —

COMMENTARY

Carl Gerold Fürst

This canon, which in the 1917 Code appeared in the chapter on the legates of the Pontiff, reserves for cardinals the appointment of two types of legates of the Roman Pontiff:

1. The legate *a latere* represents the Roman Pontiff as an *alter ego* and for that reason his function ceases upon the death of the Roman Pontiff or in the case of a resignation of the Pontiff from his office.

2. This canon characterizes the office of special emissary by its spiritual mission; however, the office is also entrusted to cardinals in other cases.

In either of the two cases, their rights are strictly subordinate to their respective pontifical mandate.

359 **Sede Apostolica vacante, Cardinalium Collegium ea tantum in Ecclesia gaudet potestate, quae in peculiari lege eidem tribuitur.**

When the Apostolic See is vacant, the College of Cardinals has only that power in the Church which is granted to it by special law.

SOURCES: c. 241; Pius PP. XII, Ap. Const. *Vacantis Apostolicae Sedis*, 8 dec. 1945, 1–5 (*AAS* 38 [1946] 67–68); *RPE* 1–6

CROSS REFERENCES: —

COMMENTARY

Carl Gerold Fürst

When the Apostolic See is vacant due to the death or resignation of the Roman Pontiff, the primatial power does not pass to the College of Cardinals, which only acquires the rights enumerated by John Paul II in the Apostolic Constitution *Universi dominici gregis*:

1. handling ordinary Church matters and other matters that cannot be delayed, in addition to preparing the election for the new Roman Pontiff (*UDG* 2);

2. exercising the civil government of the Vatican City State, but with a restriction on the right to issue decrees only for urgent matters and only valid during the vacancy of the Roman See (*UDG* 23);

3. interpreting the Apostolic Constitution on the election of the Roman Pontiff (*UDG* 5);

4. convocation by the dean of the cardinals for election and his presiding over the so-called "Congregations of Cardinals" (*UDG* 9, 19, 38, 52, 87, 90);

5. the right of the cardinal chamberlain of the Holy Roman Church, the cardinal major penitentiary, and the cardinal vicar of the Diocese of Rome to remain in office (*UDG* 14; cf. also *PB* 6 and, with regard to the cardinal vicar, the Apostolic Constitution of Paul VI *Vicariae potestatis*, January 6, 1977,[1] no. 2 § 1). If the office of chamberlain or of the major penitentiary becomes vacant during the conclave one of the cardinals will

1. *AAS* 69 (1977), pp. 5–8.

be elected to carry out that office until the election of the new pope (*UDG* 15).

On the other hand, it is provided that the College has no power with respect to the matters that belonged to the Roman Pontiff during his mandate unless expressly allowed in the Apostolic Constitution (*UDG* 1.2). Also, they do not have power over the rights of the Apostolic See and of the Roman Church (*UDG* 3), nor with regard to the pontifical laws, especially in connection with the election of the Roman Pontiff, except for their interpretation (*UDG* 15).

CAPUT IV
De Curia Romana

CHAPTER IV
The Roman Curia

INTRODUCTION

Arturo Cattaneo

The ecclesiological basis of the Roman Curia

The Apostolic Constitution *Pastor bonus*, with which the supreme legislator—after a long and careful study—restructured the Roman Curia, presents—with respect to the prior curial reform carried out by *the Apostolic Constitution Rebimini Ecclesiae universae*—some innovations of unquestionable interest. Among them stands out the preamble preceding the norms. With this preamble, the legislator situates the Roman Curia in its *ecclesiological context, forestalling criticism and objections raised* during the post-conciliar period.

The most radical criticism of the Roman Curia has gone so far as to denounce its so-called "original structural inadequacy"[1] and to question its very raison d'être, because it would promote "Roman centralism" in direct opposition to the ecclesiology of communion promoted by the Second Vatican Council.

A careful study of these claims reveals that behind them is a unilateral emphasis on the autonomy of the particular churches, at the same time obscuring what the universal Church is. Thus, there is a tendency to reduce it to a vague community of merely emotional relationships that emergee from the particular churches. In a universal Church conceived thus, it would be difficult to justify a governmental structure.[2]

The introduction of *Pastor bonus* shows, on the other hand, how a balanced and comprehensive understanding of the ecclesiology of communion also allows support for the Roman Curia. In fact, regarding the

1. G. ALBERIGO, "La curia y la comunión de las iglesias," in *Concilium*, 147 (1979), pp. 27-53.

2. A clear response to these ecclesiological errors and tendencies can be found in the Letter of the CDF sent to the Bishops of the Catholic Church *Communionis notio* (June 28, 1992).

purpose of this new reform, the Roman Pontiff expressed his desire to "make sure that the structure and working methods of the Roman Curia increasingly correspond to the ecclesiology spelled out by the Second Vatican Council" (*PB* Introd., 13 *in fine*). Among them, the three aspects that we are going to examine here are highlighted.

1. *The principle most emphasized: ministry*

The aspect of the Roman Curia that the legislator has wanted to highlight in particular is the diaconal character that must imbue all activity and the nature of this instrument. Thus, from the beginning, *Pastor bonus* offers the key to understanding and giving meaning to the existence of the Curia, precisely by mentioning the figure of Christ, the Good Shepherd who gives *his life for the sheep.*

On several occasions, *Pastor bonus* highlights the important ministerial role of the Roman Curia, specifying that its identity is expressed as service and assistance to the successor of Peter, in such a way that, in his name and with his authority, it can fulfill its duty "for the good of the churches and in service of the sacred pastors."[1] The spirit of service that must motivate all those rendering their collaboration to the pastoral work of the Roman Curia is presented—with a certain emphasis—as a service that "clearly has no equal in civil society and labour of which is given with the intent of truly serving and of following and imitating the *diaconia* of Christ himself" (*PB* 9 *in fine*).

It is a series of reflections that may seem at first sight somewhat rhetorical and abstract, but which comprise great doctrinal importance and numerous practical consequences. For example, the work of the Roman Curia is not bureaucratic or merely that of administrative functions according to strict regulations. On the contrary, its essential nature as *service* demands that it be conceived of and act with the flexibility characteristic of its mission, and its structures and functions must be continually adapted to the pastoral needs of the various communities of the faithful.[2]

2. *Full integration of the Roman Curia into the Petrine ministry*

The prologue of *Pastor bonus*, together with the emphasis on the ministerial nature of the Roman Curia, also reveals its place in the context

1. *CD* 9a, cited in *PB* 7a. The main passages from *PB*, in which the ministerial character of the Roman Curia is emphasized, are found in the introduction, arts. 1a, 3d, 7 *passim*, 8b and d, 9 *in fine*, 10a, 11b, 14b; also in arts. 1, 33 and in nos. 1 and 2 of Appendix II.

2. Cf. S. BAGGIO, "La dimensione pastorale del servizio della Curia Romana," in *L'Osservatore Romano*, July 12, 1988, pp. 1 and 4.

of ecclesiology. The title itself of the Apostolic Constitution is highly indicative in this regard: the Good Shepherd, Christ Jesus, has conferred upon the bishop of Rome in a special way the mission to teach, sanctify, and govern the people of God. *Pastor bonus* concludes the brief synthesis of the *munus petrinum* set forth in its first three sections, placing the Roman Curia in this context "which has worked in the service of the Petrine ministry from ancient times" (*PB* 3d). This fundamental principle is reaffirmed as follows: "The Roman Curia came into existence for this purpose ... to render more effective the task of the pastor of the Church which Christ entrusted to Peter and his successors" (*PB* Introd., 3e).

Obviously, it is not an innovation, because, without going beyond it, Vatican II itself had presented the Roman Curia as an instrument of which the Roman Pontiff makes use "in exercising his supreme, full and immediate power over the universal Church" (*CD* 9a).[1] Consequently, *Pastor bonus* affirms the "*truly ecclesiastical nature* [of the Roman Curia], because it draws its existence and competence from the pastor of the universal Church. For the curia exists and operates only to the extent that it has a relationship to the Petrine ministry and is based on it" (*PB* Introd., 7b).

Other consequences with marked juridical ramifications are indicated somewhat further on: for since the Roman Curia is "an instrument in the hands of the Pontiff," it follows that "it is endowed with no force and no power apart from what it receives from the Supreme pastor" (*PB* Introd., 7c). Therefore, one can also infer "what we may call the *vicarious character* of the Roman Curia, because ... it does not operate by its own right or on its own initiative. It receives its power from the Roman Pontiff and exercises it within its own essential and innate dependence on the pontiff. It is the nature of this power that it always joins its own action to the will of the one from whom the power springs. It must display a faithful and harmonious interpretation of his will and manifest, as it were, an identity with that will, for the good of the churches and service to the bishops. From this characteristic the Roman Curia draws its energy and strength, and in it too finds the boundaries of its duties and its code of behavior" (*PB* 8a).

All of these considerations would obviously be devoid of their content if the primatial office were reduced to the function merely of coordination—or, eventually, only one of exhortation—in regards to the particular churches. The numerous statements of *Pastor bonus* and the specific configuration of the dicasteries, leave no room for doubt as to how the legislator understands the content of the Petrine ministry and, consequently, the specific field of action of the Roman Curia and its competences.

1. Cf. c. 360.

3. *The relations of the Roman Curia with the Episcopal College in the building up of the Church*

The *sollicitudo omnium ecclesiarum,* which particularly devolves upon the successor of Peter, is shared *(cum et sub Petro)* by all the bishops (cf. *PB* Introd., 10a). From this statement, one can deduce the necessary and close relationship of the Petrine ministry with the College of Bishops, and, consequently, also the need for the Roman Curia—although it is directly and closely connected to the Roman Pontiff—to have a close relationship with the College of Bishops. Only in this way will the Roman Curia be harmoniously involved in the communion that holds the whole Church together, the hierarchical structure of which was endowed by the Lord with "a nature at once collegial and primatial" (*PB* Introd., 2a), and which may increasingly be "the facilitator for communion and the sharing of the concerns of the Church" (*PB* Introd., 8c).

Configuring the Curia in such a way that it adequately fits into the personal and synodal dynamic, proper to the hierarchical structure of the Church, is not an easy task. The legislator is aware of this and states it in various passages of *Pastor bonus.* In the first place, he situates the Petrine ministry—the focal point of the first three sections of *Pastor bonus*—in a solid collegial framework. The *munus petrinum,* it is concluded, necessarily implies a relation "to the *service* of the other apostles and their successors, whose sole purpose is to build up the Church in this world" (*PB* Introd., 3a). In the second place, and as a logical consequence, it is affirmed that "this same *diaconia* of the curia ... necessarily relates in the same way to the personal function of the bishops, whether as members of the College of Bishops or as pastors of the particular churches" (*PB* Introd., 8b). This requires that the *affectus collegialis,* existing between the bishops and their head, be concretely manifested through the Roman Curia and extended to the entire mystical body, which is also the body of the churches (cf. *PB* Introd., 9d).

Therefore due to its *diaconia*—united to its Petrine ministry—"the Roman Curia is closely united to the bishops of the whole world" (*PB* Introd., 9a). The bishops are, together with the churches, the first beneficiaries of the work of the dicasteries. *Pastor bonus* articles 26 and 27 contain concrete instructions for improving, promoting, and reinforcing relations between the Roman Curia and the particular churches. One that deserves specific mention is the reassessment of the *ad limina* visits—so important for unity and communion within the Church, in which there is also a "curial" aspect (cf. *PB* Introd., 10, 28–32, and Appendix 1).

Lastly, it also seems important to indicate how the relations of the Roman Curia with the College of Bishops and the particular churches must be seen in the perspective of that ministry of unity which is uniquely conferred upon the Roman Pontiff. Unity in the Church—according to *Pastor bonus*—"is a precious treasure to be preserved, defended, pro-

tected, promoted, to be forever exalted with the enthusiastic cooperation of all" (*PB* Introd., 11a). Unity of faith, yes, but also of discipline, in order to guarantee that "the legitimate freedom of action is organically developed" (*PB* Introd., 11c).

In conclusion, we can state that *Pastor Bonus*—in agreement with the ecclesiology of the Council—has managed to offer a renewed configuration and image of the Roman Curia as a valuable instrument in the direct service of the Petrine ministry for the building up of the Church, in harmony with the personal and collegial principles that make up the hierarchical structure.

360 **Curia Romana, qua negotia Ecclesiae universae Summus Pontifex expedire solet et quae nomine et auctoritate ipsius munus explet in bonum et in servitium Ecclesiarum, constat Secretaria Status seu Papali, Consilio pro publicis Ecclesiae negotiis, Congregationibus, Tribunalibus, aliisque Institutis, quorum omnium constitutio et competentia legepeculiari definiuntur.**

The Supreme Pontiff usually conducts the business of the universal Church through the Roman Curia, which acts in his name and with his authority for the good and for the service of the Churches. The Curia is composed of the Secretariat of State or Papal Secretariat, the Council for the public affairs of the Church, the Congregations, the Tribunals and other Institutes. The constitution and competence of all these is defined by special law.

SOURCES: c. 242; Paulus PP. VI, Alloc., 21 sep. 1963 (*AAS* 55 [1963] 793–800); *CD* 9; *REU* I § 1; Syn. Bish. *Nunc nobis*, 25 oct. 1969

361 **Nomine Sedis Apostolicae vel Sanctae Sedis in hoc Codice veniunt non solum Romanus Pontifex, sed etiam, nisi ex rei natura vel sermonis contextu aliud appareat, Secretaria Status, Consilium pro publicis Ecclesiae negotiis, aliaque Romanae Curiae Instituta.**

In this Code the terms Apostolic See or Holy See mean not only the Roman Pontiff, but also, unless the contrary is clear from the nature of things or from the context, the Secretariat of State, the Council for the public affairs of the Church, and the other Institutes of the Roman Curia.

SOURCES: c. 7

CROSS REFERENCES: cc. 113 § 1, 334, 1255

COMMENTARY

Antonio Viana

Canons 360 and 361 constitute one specific chapter within book II of the Code that is dedicated to the Roman Curia. In our commentary, we

will make some brief remarks on the content of both canons and then we will analyze the aspects relative to the nature, organization, and activity of the Roman Curia.

1. *Preliminary observations*

The preparatory work for canons 360 and 361 was not without its hesitations and uncertainties, motivated especially by the parallel work on the pontifical law that now regulates the Roman Curia. The difficulties arose mainly with the identification of the dicasteries that had to be mentioned in these canons.

Thus, the prior drafts of canon 360 included in the composition of the Roman Curia the secretariats, the offices, and other institutes (*aliisque institutis*), the mention of which disappeared from the final text.[1] On the other hand, in the prior drafts of the present canon 361, there was no mention of the Secretariat of State or of the Council for the Public Affairs of the Church, and, nonetheless, the congregations and the tribunals appear to be included under the name of the Apostolic See or Holy See.[2]

The subsequent promulgation of *Pastor bonus* on June 28, 1988,[3] which regulates in detail the organization of the Roman Curia, has quickly produced a notable conflict between that pontifical law and the content of canons 360 and 361. In fact, *Pastor bonus* does not allude to the Council for the Public Affairs of the Church, given that it no longer exists as a specific dicastery, and its functions have come to be incorporated into the Second Section of the Secretariat of State.

The meaning of canon 360 consists of a general discussion of the Roman Curia within the framework of the organization of the universal Church. The canon stresses that, always excepting the personal governance of the Roman Pontiff (*expedire solet*), the Curia acts in his name and with his authority for the good and service of the particular churches. Canon 360 expressly refers to a special law regulating the organization and activity of the Curia.

For its part, canon 361 contains an interpretive law similar to that set forth by the 1917 Code in canon 7 (located, we believe, more appropriately within the general norms of the former Code), which nonetheless also included the congregations and the pontifical tribunals under the name "Holy See."

1. Cf. c. 176 of the 1977 *Schema*, c. 297 of the 1980 *Schema*, and c. 359 of the 1982 *Schema*.

2. Cf. c. 298 of the 1980 *Schema* and c. 360 of the 1982 *Schema*.

3. Cf. *AAS* 80 (1988), pp. 841–912.

In addition to the aforementioned conflicts between *Pastor bonus* and the Code on the Council for Public Affairs of the Church, the Code itself does not always solely use the expression "Holy See" or "Apostolic See," as established in canon 361. Thus, for example, in the material on ecclesiastical circumscriptions, canons 294 and 433 § 1 refer to the Apostolic See and to the Holy See as the competent authority to establish respectively a personal prelature or an ecclesiastical region. On the other hand, canons 373 and 431 § 3 refer to the "supreme authority" of the Church (Roman Pontiff and College of Bishops) in connection with the erection of particular churches and ecclesiastical provinces, respectively.

2. *Nature of the Roman Curia*

The first general regulation of the Roman Curia, understood as the group of colleges (*dicasteries*) with literally defined competency to aid the pope in the governance of the universal Church, took place through the Apostolic Constitution *Immensa Aeterni Dei*, promulgated by Sixtus V on January 22, 1588.[4] During the Twentieth century, special laws on the Roman Curia were particularly frequent. Pius X regulated this matter on June 29, 1908 through the Apostolic Constitution *Sapienti consilio*,[5] which was substantially included in canons 242–264 of the 1917 Code. Following Vatican II, Paul VI promulgated the Apostolic Constitution *Regimini Ecclesiae universae* on August 15, 1967,[6] and only twenty-one years later, John Paul II reorganized this matter again through the Apostolic Constitution *Pastor bonus*. Therefore, this pontifical law constitutes the latest but not the final phase in the juridic evolution of the Roman Curia, because this matter is always subject to evolution and reform according to the changing needs of the Church and the governing styles of the various pontiffs.

As noted in *Christus Dominus* 9, the dicasteries of the Roman Curia fulfill their function "in the name and by the authority of the pontiff himself for the good of the churches and in the service of the sacred pastors" (cf. also c. 360). This idea is frequently emphasized by the preamble of *Pastor bonus*, where it states that the Curia involves assistance "in the Petrine ministry" (no. 3), such that "the principal *characteristic* of each and every dicastery of the Roman Curia is that of being *ministerial*" (no. 7). The ministerial dimension of the Roman Curia within the framework of ecclesiastical communion is manifested in collaborating regularly with the pope in his mission of service to the unity of the entire Church and of its members. The Curia is also an instrument of unity and communion be-

4. Cf. *Bullarium Romanum*, ed. Taurine, VIII (1863), cols. 985–999.
5. Cf. *AAS* 1 (1909), pp. 7–19.
6. Cf. *AAS* 59 (1967), pp. 885–928.

tween the head and the members of the episcopal college, between the universal Church and the particular churches.[7]

From the canonical point of view, the collaboration of the Curia with the pope is expressed in the exercise of the functions of promoting and consulting through acts of motivation, exhortation, and advice to the recipients.The Curia is also authorized by law to issue acts of governance that are canonically binding, within the scope of the competencies of the various dicasteries. This power that is exercised by some dicasteries of the Roman Curia is ordinary and vicarious because it entails organic participation in the power of the Roman Pontiff for the entire Church.[8] The functions of the Roman Curia must be exercised always "according to law, be it universal law or the special law of the Roman Curia, and according to the norms of each dicastery, yet with pastoral means and criteria, attentive both to justice and the good of the Church and especially for the salvation of souls" (*PB* 15).

3. *Organization*

The generic name grouping all of the bodies of the curia is *dicasteries*. These bodies are juridically equal to each other. Normally each dicastery is composed of a prefect or president, a group of cardinals, and some bishops, with a secretary to provide administrative support. In some dicasteries, some clerics and even the non-ordained faithful are also members. The members are assisted in their duties by consultors and various officials. All the members leave office when they reach the age of eighty, except the dicastery heads and the secretaries, who leave office at age seventy-five (in the case of the prefects, upon resignation submitted to the Roman Pontiff). The members also lose office upon a vacancy in the pontifical see (cf. *PB* 2–10).

The generic term *dicastery* includes various colleges, specifically called *congregations*, *tribunals*, *pontifical councils*, and *commissions*. There are also *offices* (the Apostolic Camera, the Administration of the Patrimony of the Apostolic See, and the Prefecture for the Economic Affairs of the Holy See [cf. *PB* 171–179]) and *institutes* (the Prefecture of the Papal Household and the Office for the Liturgical Celebrations of the Supreme Pontiff [cf. *PB* 2 § 3, 180–183]). The Secretariat of State holds a unique position within the organic complex of the Curia, by virtue of its immediate proximity to the pope (cf. *PB* 39–47). The common provisions

7. Cf. A. CATTANEO, "La fundamentación eclesiológica de la Curia romana en la 'Pastor Bonus'," in *Ius canonicum* 30 (1990), pp. 39–57; J.I. ARRIETA, "Principios informadores de la c. ap. 'Pastor Bonus,'" in ibid., pp. 59–81.

8. Cf. A. VIANA, "La potestad de los dicasterios de la curia romana," in *Ius canonicum*, 30 (1990), pp. 88–91.

on the composition and functions of the dicasteries are found in the General Regulations of the Roman Curia, published on April 30, 1999.[9]

At present, there are nine congregations: the Congregation for the Doctrine of the Faith, the Congregation for the Eastern Churches, the Congregation for Divine Worship and the Discipline of the Sacraments, the Congregation for the Causes of Saints, the Congregation for Bishops, the Congregation for the Evangelization of Peoples, the Congregation for the Clergy, the Congregation for the Institutes of Consecrated Life and for Societies of Apostolic Life, and the Congregation for Catholic Education (of Seminaries and Educational Institutes) (cf. *PB* 48–116).

The pontifical tribunals include the Apostolic Penitentiary, the Supreme Tribunal of the Apostolic Signatura, and the Tribunal of the Roman Rota (cf. *PB* 117–130).

The pontifical councils, of which according to the original draft of *Pastor bonus* there were twelve, at present now number eleven after the promulgation of the *Motu proprio* of John Paul II *Inde a Pontificatus* of March 25, 1993:[10] The Pontifical Council for the Laity, the Pontifical Council for Promoting Christian Unity, the Pontifical Council for the Family, the Pontifical Council for Justice and Peace, the Pontifical Council *Cor unum*, the Pontifical Council for the Pastoral Care of Migrants and Itinerant People, the Pontifical Council for Pastoral Assistance to Health Care Workers, the Pontifical Council for the Interpretation of Legislative Texts, the Pontifical Council for Inter-Religious Dialogue, the Pontifical Council for Dialogue with Non-Believers, the Pontifical Council for Culture, and the Pontifical Council for Social Communications (cf. *PB* 131–171).

Lastly, the commissions that are expressly mentioned in *Pastor bonus* include: the Pontifical Biblical Commission and the International Theological Commission, within the Congregation for the Doctrine of the Faith; the Pontifical Commission for Latin America, attached to the Congregation for Bishops; the Pontifical Commission for Preserving the Patrimony of Art and History, which was originally established within the Congregation for the Clergy but is now autonomous, though related to the Pontifical Council for Culture, with the name of Pontifical Council for the Cultural Assets of the Church;[11] the Commission for Relations with the Jews, established in the Pontifical Council for Promoting Christian Unity; and the Commission for Fostering Religious Relations with Muslims, established in the Pontifical Council for Inter-Religious Dialogue (cf. *PB* 55, 83–84, 99–104, 138, 162).

9. Cf. *AAS* 91 (1999), pp. 629–699.
10. *AAS* 85 (1993), pp. 549–552. The mp establishes the integration of the Pontifical Council for Dialogue with Non-Believers and the Pontifical Council for Culture.
11. Ibid., art. 4 § III.

The description of the various names of the dicasteries is indicative of their areas of competence. Other supposed attributions of competence can also be combined with subject or function criteria, such as a personal criterion (allowing actions for given faithful, as occurs in the case of the Congregation for the Eastern Churches or the Council for the Laity) or territorial criterion (the exercise of competence in given territorial spheres, as occurs in the Congregation for the Evangelization of Peoples).

The dicasteries of the Roman Curia act in plenary sessions and ordinary meetings, pursuant to the provisions of the relevant regulatory norms. Plenary sessions are usually held once per year, and they handle matters of major importance (cf. *PB* 11).

4. *Functions*

The congregations and tribunals exercise the power of executive and judicial governance, respectively; however, the councils and commissions are not of themselves active or decisive organs, but rather consultative.This juridic division of the dicasteries, based on the functions entrusted to them, into congregations and tribunals on the one hand, and councils and commissions on the other, is not understood in a strict sense. In fact, the task of the congregations is not finished with the issuance of binding administrative juridic acts because there is a wide area of ecclesiastical governance that needs no mandate for its exercise, but rather requires an indicative counsel or exhortation of encouragement in order to be the recipient that adopts the proper determinations under its full responsibility. Comparably, although pontifical councils have been entrusted with functions of pastoral encouragement, and they only intervene in the preparation of acts of governance, on occasion their assignment is not exhausted in those consultative or fostering functions; they also have the capacity to issue acts influencing the juridical sphere of the faithful. It is worth emphasizing the unique position of the Council for the Laity, which has been attributed broad competence for handling everything concerning lay associations of the faithful. Its capacity to establish and assess the statutes of those associations has an international scope (cf. *PB* 134).

Taking into account the preceding comments, we can say that, ordinarily and generally, vicarious executive and judicial power is exercised in the Roman Curia through the Secretariat of State, the congregations, and the tribunals. There is certainly a distinction between the administrative power of the congregations and the judicial power of the tribunals, but there are some exceptions. At times, the congregations assume competence that seems more characteristic of that of a tribunal. The Congregation for the Doctrine of the Faith, for example, judges crimes against the faith and the more serious crimes committed against morals and the celebration of the sacraments. It is even authorized with a general mandate to

declare or impose canonical sanctions, always in accordance with common or particular law. Moreover, it has the authority to judge everything concerning the privilege of the faith (cf. *PB* 52–53). For its part, the Congregation for Divine Worship and the Discipline of the Sacraments prepares the preliminary procedure for the concession by the Roman Pontiff of the dispensation of a non-consummated marriage and also handles causes for nullity of sacred ordination (cf. *PB* 67–68). Similarly, the Apostolic Signatura does not always act as a real tribunal, but rather as an administrative body (cf. *PB* 124, 1° and 4°).[12]

With respect to the exercise of legislative power, the general principle is that it belongs personally to the Roman Pontiff and not to the congregations. However, the possible exercise of legislative power by the congregations in some cases constitutes a sensitive problem for the canonical system, which historically has caused significant difficulties[13] and which today also provokes diverse doctrinal opinions. The problem may be summed up as follows, from current law:

According to canons 30 and 135 § 2, the dicasteries of the Roman Curia—more specifically the congregations having executive power—can only issue general legislative decrees through express delegation by the Roman Pontiff, in particular cases, along with any conditions attached to the act. Within the system of the code, delegation is the only channel established for the Roman Curia for the exercise of legislative power that belongs personally to the pope.

Nonetheless, *Pastor bonus* 18b establishes that "the dicasteries cannot issue laws or general decrees having the force of law or derogate from the prescriptions of current universal law, unless in individual cases and with the specific approval of the Supreme Pontiff" ("nisi singulis in casibus atque de specifica approbatione Summi Pontificis"). The same provision is established in article 125 § 2 of the *Regolamento generale della Curia Romana*, with some differences in the wording.

The content of *Pastor bonus* 18b has recently given rise to a doctrinal debate. The discussion basically refers to whether this article is the basis for a new channel for the exercise of legislative power by the dicasteries of the Curia other than the delegated legislation established in canons 30 and 135 § 2 of the Code,[14] or whether it is simply the application of

12. Cf. Z. GROCHOLEWSKI, "Función de la Rota Romana y de la Signatura Apostólica," in *Concilium* 147 (1979), pp. 68ff.
13. Cf. A. VIANA, "La potestad," pp. 94–98.
14. Cf. E. LABANDEIRA, "Clasificación de las normas escritas canónicas," in *Ius canonicum* 29 (1989), pp. 687ff; A. VIANA, "La potestad," pp. 101ff; and T. RINCÓN, "El decreto de la Congregación para el Clero sobre acumulación de estipendios (22.II.1991)," in *Ius canonicum* 31 (1991), pp. 635ff.

the Code in the specific case of the Roman Curia.[15] If the first solution is accepted, *Pastor bonus* 18b would contemplate what could be called legislative decrees by ratification or approval by the pope *in forma specifica,* in line with what was already provided by the *Motu proprio Cum iuris canonici* of September 15, 1917.[16] According to the traditional meaning of pontifical approval *in forma specifica,* the decrees of the Curia thus approved would have the same legal effect as if they had been published personally by the pope. On the other hand, if the second solution is accepted, the norms issued by virtue of article 18b would always be legislative decrees by pontifical delegation, and therefore, not equal in juridic effect to pontifical acts.

It is not possible to summarize the terms of the discussion here.[17] What we can say is that, in our opinion, the recent practice of the Roman Curia justifies the following distinction: legislative decrees of the Curia issued by virtue of canon 30 without pontifical approval;[18] and decrees of the Curia with legislative value by virtue of specific papal approval.[19] The meaning of *Pastor bonus* 18b consists, in the last analysis, of establishing a procedure preliminary to the issuance of legislative acts by the dicasteries of the Curia, which acts may even have the effect of derogating from universal law. With this complex procedure, including the development of a decree by the dicastery as well as its specific approval by the Roman Pontiff, it guarantees an assessment of the factual situation by the supreme legislator before the act is promulgated. Therefore, a recent doctrinal posture maintains that, although the assumptions of canon 30 and *Pastor bonus* 18b are different, the latter norm has established a minimum condition, required in every case, for the dicasteries to issue legislative acts or to derogate from the provisions of existing universal law. This min-

15. Cf. F.J. URRUTIA, "Quandonam habeatur approbatio 'in forma specifica,'" in *Periodica* 80 (1991), pp. 3–17, *passim;* idem, "... Atque de specifica approbatione Summi Pontificis (Ap. Const. *Pastor bonus,* art. 18)," in *Revista española de derecho canónico* 47 (1990), pp. 543–561, *passim;* A. MARZOA, "Protección penal del Sacramento de la penitencia y de los derechos de los fieles (Decreto general de la Congregación para la Doctrina de la Fe, September 23, 1988)," in *Ius canonicum* 30 (1990), p. 168, note 5; J. MANZANARES, "De stipendio pro missis ad intentionem 'collectivam' celebratis iuxta decretum 'Mos iugiter,'" in *Periodica* 80 (1991), p. 588; J.B. D'ONORIO, *Le Pape et le gouvernement de l'Église* (Paris 1992), p. 117.

16. Cf. *AAS* 9 (1917), pp. 483–484, no. III.

17. Cf. A. VIANA, "El Reglamento General de la Curia Romana (4.II.1992). Aspectos generales y regulación de las aprobaciones pontificias en forma específica," in *Ius canonicum* 32 (1992), especially pp. 515–523.

18. Cf. Decr. of the CDF, September 23, 1988 regarding the scope of c. 1388, given by virtue of c. 30 and without pontifical approval: *AAS* 80 (1988), p. 1367.

19. Cf. Decr. of the CC, February 22, 1991 regarding Mass offerings, in *AAS* 83 (1991), pp. 443–446, which contains the following clause: "Summus Pontifex ... relati Decreti normas in forma specifica die ... approbavit, easque promulgare et vigere iussit." The recent normative of the *RGCR* also confirms, in my opinion, that the approval specified in *PB* 18b is the same as the approval *in forma specifica:* Cf. A. VIANA, "El Reglamento," cit., pp. 523ff.

imum condition is approval *in forma specifica* by the pope.[20] Future practice by the Curia will determine if the channel of the specifically approved decrees will predominate (*PB* 18b), or if the method of delegated legislation of canon 30 will also be used in cases in which the Roman Pontiff does not personally exercise his legislative power and decides to use the Curia to publish laws or general decrees with the force of law, or to derogate from legislative provisions of universal law. An innovation introduced by the *Regolamento* consists of the determination that the clause *in forma specifica approbavit* must be expressly included to establish specific approval by the pope of an act of document of the Curia (cf. *RGCR* 126 § 4).

On the other hand, general executive decrees and instructions are already included in the ordinary, vicarious, and general power of the Roman congregations. Both types of general administrative norms are subject to the principle of legality (cf. *PB* 156 related to cc. 31–34). In particular, general executory decrees do not derogate from laws (under sanction of nullity) "even if published in directories or other such documents (c. 33 § 1)."

In this context, the Council for the Interpretation of Legislative Texts plays a decisive role. According to the provisions of *Pastor bonus* 156ff, this pontifical council exercises real legal control over the general provisions of diverse legislators and administrators of the supreme authority. It is also authorized to control, before publication, the legality and formal technicalities of administrative norms prepared by the dicasteries. This council, within the sphere of its consultative competence, has the important mission of contributing to the effective development of a true diversity of functions in ecclesiastical government, thus promoting good governance, order, and respect for the provisions of law. Also, it should not be forgotten that this is an area that is particularly binding on the Roman Curia for the obvious reason that it should be exemplary with respect to other ecclesiastical governance.

5. *Controls*

To conclude this commentary, we should make some brief references to the limits or controls imposed on the exercise of the power of the Roman Curia. These limits are varied and necessary. They are varied because some are exercised personally by the Roman Pontiff, others by certain dicasteries; some occur prior to the acts, others subsequent to them. They also have a diverse dynamic according to how they are exercised on the activity of the tribunals (in such cases, there are few controls) or on other dicasteries. Furthermore, they are necessary controls because they tend to guarantee proper development of the vicarious nature (which is

20. Cf. V. GÓMEZ-IGLESIAS, "La 'aprobación específica' en la 'Pastor Bonus' y la seguridad juridical," in *Fidelium iura* 3 (1993), p. 407.

participation in aspects of the pontifical power) and unity of the primatial power.

The criterion of administrative coordination is among these controls, in the sense that there is an attempt to avoid adopting disperse and contradictory acts and measures. It is a principle that was extensively developed in *Pastor bonus*. In addition to establishing the necessary coordination between the various dicasteries when discussing specific competencies, it also generally provides mutual communication in the preparation of general documents, joint examination of matters that are within the competence of more than one dicastery, and even possible establishment of permanent commissions consisting of more than one dicastery. Moreover, it establishes a meeting several times a year of the cardinals who are heads of the dicasteries, by mandate of the pope, in order to coordinate efforts (cf. *PB* 58 § 2, 61, 73, 78, 92, 94, 96, 103, 120, 137, 144, 147, 161, 168, 169 § 2, 181 § 3).[21] In addition to the Secretariat of State, the Congregation for the Doctrine of the Faith, the Council for the Interpretation of Legislative Texts, and the Tribunal of the Apostolic Signatura are bodies promoting coordination within the scope of their competencies.[22]

Another possible limit in the exercise of the power of the Roman Curia regarding the competence of the dicasteries occurs when the Pontiff reserves a matter to himself. It is a power that is not regulated as such by existing law, but is typical of this power's vicarious nature inasmuch as this canonical institute avoids a definitive rupture between the holding of power (which belongs to the pope) and its exercise (which can be assumed personally by the Pontiff by exercising his power to reserve a matter to himself).

Preliminary consultation, special mandates, and pontifical approval also affect the Roman Curia. *Pastor bonus* 18c establishes these effects by stating that "it is of the utmost importance that nothing grave and extraordinary be transacted unless the Supreme Pontiff be previously informed by the moderators of the dicasteries." With respect to other controls, article 18a establishes that any decisions of major importance—therefore not all—that must be made by the Curia must be subjected to the approval of the pope. According to this article, those decisions based on a special mandate attributed by the pope to the head of a dicastery or sentences of the Roman Rota or of the Apostolic Signatura within the limits of their competence do not require approval.

21. Also cf. arts. 17, 21 and 23. The criterion for administrative coordination has been thoroughly developed by the norms of the *RGCR*: cf. arts. 98ff and 130ff.
22. Cf. A. VIANA, "La potestad," pp. 107–108.

CAPUT V
De Romani Pontificis Legatis

CHAPTER V
Papal Legates

362 **Romano Pontifici ius est nativum et independens Legatos suos nominandi ac mittendi sive ad Ecclesias particulares in variis nationibus vel regionibus, sive simul adCivitates et ad publicas Auctoritates, itemque eos transferendi et revocandi, servatis quidem normis iuris internationalis, quod attinet ad missionem et revocationem Legatorum apud Res Publicas constitutorum.**

The Roman Pontiff has an inherent and independent right to appoint Legates and to send them either to particular churches in various countries or regions, or at the same time to States and to public Authorities. He also has the right to transfer or recall them, in accordance with the norms of international law concerning the mission and recall of representatives accredited to States.

SOURCES: c. 265; *SOE* I, 2; III, I

CROSS REFERENCES: cc. 3, 331, 333–334

COMMENTARY

Flavia Petroncelli Hübler

1. The provisions of chapter V, in regulating the function and the duties of the representatives of the Roman Pontiff, give preferential attention to those persons heading an ecclesiastical, diplomatic mission, as in the 1917 Code, canons 265–270. However, they take into account the needs to reorganize this institution, resulting from Vatican II (*CD* 9, 10, and 38), and the development of theological thought, discipline, and the relations of the Church *ad intra* and *ad extra*. With respect to these latter,

in particular, the norms in question constitute the only organic base of the discipline of the Code, from the time in which regulations of relations *ad extra*, although they were present in the draft of *Lex Ecclesiae fundamentalis*, were not included in the Code for a variety of reasons.[1]

The innovations in this institute have been made clear by doctrine in the first commentaries on the new norms,[2] with useful references to the most incisive historico-juridical analyses on the function of the legates,[3] and with a lively concern for ensuring due space for the disciplinary options adopted after Vatican II, especially through the *Motu proprio Sollicitudo omnium ecclesiarum*, which had attracted the attention of numerous scholars on this subject.[4] These innovations notwithstanding, up until now a new exhaustive treatment has been lacking. This lack could probably be attributed to basic uncertainties still manifested in some disciplinary options, to the terminology used, which on occasion mistranslates the ecclesiology of the Council, and to the multiplicity of the subjects of study that have occupied the attention of authors as a result of the promulgation of the Code.

Consequently, in order to support and promote a correct analysis of this institute, attention should be paid above all to the *rationale legis*.

2. The legislator of the Code, concerned with affirming the Pontiff's right to appoint legates, defines its basis. The terms used evoke the needs of self-defense of the character of the Church's "public nature" that conceived of the Church as *societas perfecta*. The reference to independence with respect to civil society, justified in the 1917 Code by the known mutability of the Roman question, has been omitted. The provision may now be read as adapting the right to appoint legates to the dimension of the

1. Cf. *Comm.* 16 (1984), p. 91; G. DALLA TORRE, "Il 'diritto pubblico esterno' e la nuova codificazione canonica," in *Studi in memoria di P. Gismondi*, vol. I (Milan 1987), pp. 419ff.

2. Cf. F. PETRONCELLI HÜBLER, "De Romani Pontificis Legatis," in *Raccolta di scritti in onore di P. Fedele* (Perugia 1984), pp. 555ff; J.L. GUTIÉRREZ, commentary on ch. V, "De Romani Pontificis Legatis," in *Pamplona Com*; L. CHIAPPETTA, *Il Codice di diritto canonico* (Naples 1988), p. 446; D. LE TOURNEAU, "Les légats pontificaux dans le Code de 1983, vingt ans après la constitution apostolique *Sollicitudo omnium Ecclesiarum*," in *L'Année canonique* (1989), pp. 229ff; A. TALAMANCA, "I rappresentanti diplomatici della Santa sede tra tradizione e innovazione," in *La politica internazionale della Santa Sede 1965–1990* (Naples 1992), pp. 135ff.

3. Cf., in particular, G. PARO, *The Right of Papal Legation* (Washington D.C. 1945); I. CARDINALE, *Le Saint-Siège et la diplomatie* (Paris 1962); idem, *The Holy See and the International Order* (Toronto 1976); P. BLET, *Histoire de la représentation diplomatique du Saint-Siège, des origines à l'aube du XIX siècle* (Vatican City); J.P. DE GANDT, "L'extension des relations diplomatiques du Saint-Siège depuis 1900," in J.B. D'ONORIO, *Le Saint-Siège dans les relations internationales* (Paris 1989), pp. 421ff.

4. Cf. A. BRAIDA, "L'ufficio dei rappresentanti del Romano Pontefice," in *Apollinaris* (1979), p. 175; L. DE ECHEVERRÍA, "Funciones de los legados del Romano Pontífice: El Motu Proprio *Sollicitudo omnium Ecclesiarum*," in *Revista española de derecho canónico* (1969), p. 573; M. OLIVERI, *Natura e funzioni dei Legati Pontifici nella storia e nel contesto ecclesiologico del Vaticano II* (Turin 1978).

Church delineated in *Lumen gentium* and to the terms of the pontifical *munus* defined by that document and by *Christus Dominus*.

The canon begins by mentioning the assignments of the legates "ad Ecclesias particulares in variis nationibus vel regionibus," thus confirming the primary requirement and the desire to nurture the community dimension of the Church, through relationships designed to express the care of the Roman Pontiff towards the particular churches and their faithful.

The reference to nations and to regions makes it clear that, with regard to these missions, the needs of the Church are primary and may render it advisable not to follow the political divisions of territories. Representatives can be sent to particular churches, which is described as the right to appoint legates *ad intra*, and the full freedom to do this has always been claimed. In these cases the simultaneous granting of representative duties before the political authorities of the territory can be dispensed, and it is not considered a manifestation of diplomatic activity. It constitutes an ancient tradition in the Church, which has acquired new vigor in the last century,[5] inasmuch as the representations carried out in particular churches in non-Catholic countries or countries hostile to religion allowed the gradual establishment of dialogue with governments.

3. With respect to the relations of the Church *ad extra*, the right to establish legations finds its constitutional justification in the "religious mission," as defined in *Gaudium et spes* 42, and it must be considered as a manifestation of the "right of presence," through the "public institutions" of the Church (*GS* 89). The legislator defines the scope and terms of this right to representation with a formula that, exceeding the prior, exclusive reference to inter-state relations, legitimizes the sending of representatives of the Pontiff to other public authorities that favor international relations. This formula is open to the development of relations with the political communities and the international community, in line with the practice of introducing dialogue by the most recent Pontiffs, which, in some way, connects with an ample formula used by canon 3 that confirms the validity of all the accords signed by the Holy See.

Fortunately, it has been provided that the sending and recalling of legates accredited to governments must be carried out in compliance with the norms of international law, taking into consideration the ratification by the Holy See of the Vienna Convention on diplomatic relations of April 18, 1961, as well as the more recent development of the international activity of the Holy See. Today, as in the past, the establishment of ecclesiastical diplomatic representation follows the criterion of reciprocity and is carried out through an express or tacit agreement. Likewise, the sending of a representative with only a mission to a particular church is understood as a unilateral act of the Roman Pontiff.

5. Cf. I. CARDINALE, *Le Saint-Siège*, pp. 100ff.

4. With respect to the technical aspects, the right to representatives includes the appointment, sending, transfer, and recall of the representatives. This right devolves personally upon the successor of Peter by reason of his office as the supreme pastor of the Church. For purposes of international representation, however, the sovereignty of the Pontiff over Vatican City State is also relevant. In fact, the title of accreditation that accompanies the legates, who are at the same time discharging a mission before the State, is unique, and the Pontiff himself signs the letters of credence. In the exercise of the right to representatives before governments, the double international subjectivity of the Church and Vatican City State, defended for a long time by canonists,[6] is not manifested, but rather it is the presence of a sovereign subject, the Holy See, capable of acting in representation of entities differentiated in internal law. The "monist" thesis, in all other respects, finds full confirmation in pontifical discourses, as well as in practice and in international doctrine, and it makes it possible to explain the coordinated commitment of the Church in the complex world of international relations.[7]

Diplomatic representatives sent by the various States to the Pontiff are also accredited before the Holy See.

5. All diplomatic activity is under the care of the Secretariat of State, which, according to the provisions in the recent Constitution on the Reform of the Roman Curia (*PB* 39), has also assumed, in connection with the activity of the representatives of the Pontiff, the responsibilities that were previously discharged by the Council for the Public Relations of the Church. Thus, the persistent difficulty in delimiting competencies has disappeared, although all the risks of deviation in the organization of diplomatic activity have not been excluded altogether, given that the first section of the Secretariat of State has been entrusted with the competencies to "supervise the office and work of the legates of the Holy See, especially as concerns the particular churches," and "deals with everything concerning the ambassadors of States to the Holy See." The Secretariat also handles, in accordance with other competent dicasteries, "matters concerning the presence and activity of the Holy See in international organizations." The second section of the Secretariat, pursuant to *Pastor bonus* 45, handles relations with the States and sees to "the special task of dealing with civil governments," but according to article 46 it must, among other things, promote diplomatic relations, "represent the Holy See at international organizations and congresses concerning issues of a public nature" and "within the scope of its competence, to deal with what pertains to Pontifical representatives."

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6. Cf. P.A. D'AVACK, "Santa Sede," in *Novissimo Digesto Italiano*, vol. XVI (Turin 1969), p. 496, and the extensive bibliography cited there.

7. Cf. F. PETRONCELLI HÜBLER, *Chiesa cattolica e comunità internazionale: riflessione sulle forme di presenza* (Naples 1989).

6. In order to protect the exercise of the right to representation of the Roman Pontiff, in addition to the guarantees provided in the Convention of Vienna, the norms of the Treaty between the Holy See and Italy, of February 11, 1929, are available to ensure freedom of transit through the territory of Italy for diplomats sent by the Holy See or accredited by it (art. 19).

363 **§ 1. Legatis Romani Pontificis officium committitur ipsius Romani Pontificis stabili modo gerendi personam apud Ecclesias particulares aut etiam apud Civitates et publicas Auctoritates, ad quas missi sunt.**

§ 2. Personam gerunt Apostolicae Sedis ii quoque, qui in pontificiam Missionem ut Delegati aut Observatores deputantur apud Consilia internationalia aut apud Conferentias et Conventus.

§ 1. To Legates of the Roman Pontiff is entrusted the office of representing in a stable manner the person of the Roman Pontiff in the particular churches, or also in the States and public Authorities, to whom they are sent.

§ 2. Those also represent the Apostolic See who are appointed to pontifical Missions as Delegates or Observers at international Councils or at Conferences and Meetings.

SOURCES: § 1: *SOE* I, 1, 2
§ 2: *SOE* II, I

CROSS REFERENCES: cc. 131 § 1, 145 § 1, 1405 § 1, 3°

COMMENTARY

Flavia Petroncelli Hübler

1. The provisions of paragraph one define the office of the legates of the Pontiff and describe it as being constituted in a stable manner; therefore, it must be considered within the perspective and objectives of the provisions of canon 145 § 1 and, more generally, of *title* IX *of book* I.

In this way, an institute with an ancient tradition is confirmed, which, in spite of its numerous, eventful changes, fed by internal and external Church tensions, has always carried out the double task of manifesting inwardly towards the Church in the care of the bishop of Rome for the brothers in the episcopate and the faithful entrusted to their care; and outwardly, by the availability and the interest of the Pontiff in dialogue with political communities.

The mention of the *duas ordinarias potestates* contained in the 1917 Code has disappeared; thus the rationale for an office based on the *munus* of the bishop of Rome appears more clearly and at the same time mani-

fests how the religious mission allows a contribution to "form a very close bond between the various communities and nations" (*GS* 42).

2. In this canon, the specification of the roles and the functions, fully discussed in the 1917 Code and in the *Motu proprio Sollicitudo omnium ecclesiarum*, is omitted. Therefore, the customary ranks are confirmed, and quicker adaptations to specific instances are provided, although diplomatic practice is one of the more immutable categories.

The missions of pontifical diplomacy include:

a) apostolic delegates, who are representatives with an official mission only for the local churches;

b) apostolic visitators, with special duties with regard to the dioceses as well as governments;

c) nuncios and internuncios, on an international level, equivalent to ambassadors and special envoys and plenipotentiary ministers respectively;

d) regents and stable chargé d'affaires who represent the Apostolic See at local churches and governments;

e) delegates and observers, with the mission to be representatives at international organizations, conferences, and congresses.

3. The position of the apostolic delegate (cf. commentary on c. 362) dates back to ancient times, but has undergone various changes throughout time, dictated by the need to adapt canonical discipline to the concrete possibilities of spreading the Catholic faith.

The use of diplomatic representatives for particular churches and governments, also with a tradition many centuries old, has followed the changing nature of Church-State relations and has developed along the lines of international law. The possibility of dialogue during the last thirty years has brought a marked multiplication of diplomatic representatives sent by the Holy See and those accredited to it.[1]

The sending of delegates and observers is relatively recent, but it is constantly growing, owing to the development of international organizations and the progressive willingness of the international community to analyze and develop solutions to the major problems common to many peoples. The Holy See immediately declared itself available for international collaboration, but little by little it has been adopting a line of participation that particularly manifested the Church's desire to serve the cause of peace and justice,[2] and at the same time avoided the obligation to render services that were difficult to sustain and were not in keeping with its

1. Cf. *Annuario pontificio per l'anno 2003*, pp. 1216–1270.
2. A. Casaroli, "La Santa Sede e la Comunità internazionale," in *La Comunità internazionale* 29 (1974), pp. 595ff.

mission. Thus, observers with consultative powers are usually sent to international governmental organizations, as well as conferences and congresses, promoted by them or by the State. Where the Holy See decides to participate as a member in its name, or in the name of Vatican City State, representation is entrusted to a delegate enjoying all the prerogatives characteristic of his office (right to vote, etc.). In exceptional cases, representation before the European community, perhaps due to the unique nature of this organization, is entrusted to a nuncio.

4. In order to reinforce the commitment of the Holy See in the international community and ensure equal rank and status for the activities of the delegates and observers, paragraph 2 of this canon appropriately specifies that those having these pontifical missions "represent the Apostolic See." However, the provisions of this chapter no longer refer to these representatives, but rather to the legates, when they establish the nature of the office and the scope of their jurisdiction as well as when they define its duties. Naturally, this does not preclude the delegates and observers from being ensured specific status by canonical provision in accordance with the provisions of international accords signed by the Holy See.[3]

5. It is not necessary that the offices entrusted to representatives of the Roman Pontiff, of themselves, be conferred upon persons who have received sacred orders. The authority of the person accrediting them, the status of those receiving them, and the eventuality of special mandates entailing the exercise of jurisdiction have always rendered it advisable to select representatives from among the clergy and to appoint bishops as the heads of missions. After the statements of Vatican II on the common priesthood of the faithful and on the need to reconsider the role of the laity in the Church, many hoped for a change of orientation in this regard, but in fact only in some cases have members of the laity been entrusted with representative missions, mainly in the capacity of delegates or observers. Similar cautiousness prevailed during the revision of the Code, probably due to valid pastoral reasons and to the orientation of the doctrine that has considered the office of legate as "participazione al munus del Vescovo di Roma."[4] Thus, the new discipline does not preclude exceptions in the practice that is many centuries old, but is decidedly oriented, especially in canon 366, towards clergy invested with the rank of bishop.

Vatican II expressly requested that the legates come from different countries, and that suggestion had a wide and quick response; in the same

3. Cf., in particular, the Vienna Convention, regarding the representation of the State in their relations with international organizations of universal character, concluded in Vienna on May 14, 1975.

4. Cf. M. OLIVERI, *Natura e funzioni dei Legati Pontifici nella storia e nel contesto ecclesiologico del Vaticano II* (Turin 1978); P. JOVINO, art. "Diplomazia Pontificia," in *Enciclopedia giuridica* (Rome 1989).

years, also at the request of the Council, the Roman Curia was internationalized.

6. The sensitive nature of the office of the representatives of the Pontiff has always militated in favor of providing for careful selection and mindful preparation of those who must fill the office. The diplomats are trained in the Pontifical Ecclesiastical Academy, the programs and study methods of which are observed with interest by various secular schools with the same objective. In fact, in the past as well as in today's complex world of international relations, pontifical representatives have been and are highly valued for their mode of work, and their contributions are often considered original and determinative.

364 **Praecipuum munus Legati pontificii est ut firmiora et efficaciora in dies reddantur unitatis vincula, quae inter Apostolicam Sedem et Ecclesias particulares intercedunt. Ad pontificium ergo Legatum pertinet pro sua dicione:**

1° ad Apostolicam Sedem notitias mittere de condicionibus in quibus versantur Ecclesiae particulares, deque omnibus quae ipsam vitam Ecclesiae et bonum animarum attingant;

2° Episcopis actione et consilio adesse, integro quidem manente eorundem legitimae potestatis exercitio;

3° crebras fovere relationes cum Episcoporum conferentia, eidem omnimodam operam praebendo;

4° ad nominationem Episcoporum quod attinet, nomina candidatorum Apostolicae Sedi transmittere vel proponere necnon processum informativum de promovendis instruere, secundum normas ab Apostolica Sede datas;

5° anniti ut promoveantur res quae ad progressum et consociatam populorum operam spectant;

6° operam conferre cum Episcopis, ut opportuna foveantur commercia inter Ecclesiam catholicam et alias Ecclesias vel communitates ecclesiales, immo et religiones non christianas;

7° ea quae pertinent ad Ecclesiae et Apostolicae Sedis missionem, consociata cum Episcopis actione, apud moderatores Civitatis tueri;

8° exercere praeterea facultates et cetera explere mandata quae ipsi ab Apostolica Sede committantur.

The principal task of a Papal Legate is continually to make more firm and effective the bonds of unity which exist between the Apostolic See and the particular churches. Within the territory assigned to him, it is therefore the responsibility of a Legate:

1° to inform the Apostolic See about the conditions in which the particular churches find themselves, as well as about all matters which affect the life of the Church and the good of souls;

2° to assist the bishops by action and advice, while leaving intact the exercise of their lawful power;

3° to foster close relations with the Bishops' Conference, offering it every assistance;

4° in connection with the appointment of bishops, to send or propose names of candidates to the Apostolic See, as well as to prepare the informative process about those who may be promoted, in accordance with the norms issued by the Apostolic See;

5° to take pains to promote whatever may contribute to peace, progress and the united efforts of peoples;
6° to work with the bishops to foster appropriate exchanges between the catholic Church and other Churches or ecclesial communities, and indeed with non-Christian religions;
7° to work with the bishops to safeguard, so far as the rulers of the State are concerned, those things which relate to the mission of the Church and of the Apostolic See;
8° to exercise the faculties and carry out the other instructions which are given to him by the Apostolic See.

SOURCES: cc. 267, 269; *CD* 8a; *GS* 77; *SOE* IV–VI, VIII; SCB *Index facultatum nuntiis, internuntiis et delegatis apostolicis tributarum*, 1 ian. 1968; SCPF *Index facultatum... in territoriis missionum*, 1 ian. 1971; *NPCEM* IX, XII

CROSS REFERENCES: cc. 377 § 3, 450 § 2, 459

COMMENTARY

Flavia Petroncelli Hübler

1. The importance and recognized preeminence of the ecclesiastical mission of pontifical legates have led the legislator to discuss its *ad intra* and *ad extra* functions in two different successive provisions.

This canon affirms, with an unequivocal premise, that the main function of pontifical legates is to make stronger and more effective the bonds of unity that exist between the Apostolic See and the particular churches. Then it enumerates in eight headings the responsibilities of legates within the scope of their territory. The list is certainly neither exhaustive nor restrictive, but rather attempts to make some appropriate specifications, through well thought-out formulas, which seem to take into account the innovation introduced in the Church as a result of Vatican II and the subsequent provisions that have given an emphasis to the manifestations of *affectus collegialis* and the competencies of the local bishops. The provisions of the canon do at times err on the side of being too generic or they leave gaps. Experience shows that, in some cases, there is a reversal of the traditional situations that considered pontifical representatives as being in a preeminent position with respect to the local hierarchy; therefore, a careful interpretation of the provisions of this canon seems highly warranted. This interpretation undoubtedly should be done with the help of the *Motu proprio Sollicitudo omnium ecclesiarum*, which offers

broader and yet more valid specifications on many points, although its discussion of the functions of the legates is ordered differently.

2. Essentially, an *ad intra* action, in addition to the exercise of authority and compliance with the specific mandates alluded to in no. 8°, is developed in two directions: toward the Apostolic See with respect to the bishops fulfilling their mission in the territory of the competence of the legate, as well as toward the communities living in that territory. Each of these activities, however, does not exclude complex contacts, and both require mutual will.

As specified in no. 1°, the representatives of the Roman Pontiff transmit information to the Apostolic See on everything involving the life of the Church and the good of souls, as well on the condition of the particular churches. Those reports must demonstrate that the representative is a sensitive interpreter and communicator of the socio-ecclesiastical reality and of the needs of the dioceses. In fact, the right of bishops to communicate directly with the Holy See remains secure, and the *ad limina* visit now takes on a fundamental significance, but both modes of communication may be more effective if the Apostolic See (also through the assistance of the diplomatic courier) is informed of local problems in a timely and accurate manner, without excluding news on given socio-operational situations.

The Holy See also has a correlative duty to offer thoughtful replies—a duty that may be adequately performed with assiduous collaboration with the offices and dicasteries of the Roman Curia, called to intervene in each case by the Secretariat of State or directly by the legates. It is also appropriate—and *Sollicitudo omnium ecclesiarum* so specifies—for the dicasteries to ask legates their opinion on acts and decisions to be adopted for the territory in which they are fulfilling their mission.

With respect to the appointment of bishops, legates communicate or propose to the Apostolic See the names of candidates, albeit according to current norms (cf. c. 377 § 3) and the legitimate privileges granted or acquired. It also devolves upon the legates to instruct on the information process regarding those who are going to be promoted.

3. Relations with bishops present the more sensitive aspects of the mission of legates with respect to the particular churches. Given the broad provision of canon 368, one should consider that legates must also act within the structures that the norm equates with a diocese. Although the Code does not so specify, there may also be useful contacts between the Pontiff's representatives and Catholic organizations. In all other respects, chapter IV of *Sollicitudo omnium ecclesiarum* remains valid, where it discusses the assistance that must be rendered by legates to religious communities.

With regard to the scope of the episcopal *munus*, legates are asked to assist the bishops "without detriment to the exercise of the legitimate

power of the latter," where the 1917 Code assigned them the duty of vigilance. It is still essential that the action of the pontifical representatives exhaust all means of pastoral care before and with preference to the use of authoritative intervention. (In this sense, *SOE* appropriately called for a "spirit of fraternal cooperation").

There should be mutual sensitivity in cooperation with bishops for the purpose of fostering the development of ecumenical relations and relations with non-Christian religions.

In connection with the provisions of no. 7°, all personal initiative should be avoided, and bishops should be available for joint action in defense of the mission of the Church and of the Apostolic See.

If no. 3° requires that legates foster frequent contacts with the Bishops' Conference, it is equally necessary for legates of the Roman Pontiff, even though they are not *de jure* members (c. 450 § 2), to receive appropriate information and a welcome from the conference. More should be expected of the meetings of the bishops' conferences, where such conferences have been established, and to this effect some indications are given in the respective statutes.[1]

In short, therefore, the Code has tried to prevent any undue interference by legates in the life of the local churches, but the positive effects of real development of ecclesiastical communion, which is the intent of all these norms, can only emerge from real cooperation among legates and bishops.

4. Concerning the relations between the Pontiffs' representatives and the hierarchies of the local churches, the legislator recommends that these representatives also seek to promote everything related to peace, progress, and cooperation among peoples (no. 5°). From an initial reading, this provision certainly appears unique. This type of function seems more in keeping with the diplomatic dimension of legates, although it is correctly stated that commitment to peace and progress should today be considered a fundamental duty of all the faithful.

This paragraph does have a specific meaning (in addition to the fact that it could not have fit anywhere else), given that canon 365 exclusively discusses the Holy See's relations with States: the legislator has appropriately included among ecclesial missions the promoting of peace, progress, and cooperation among peoples. In particular, it encourages pontifical representatives to recognize and support all the good done in the territory in which they are fulfilling their mission (on the initiative of individuals and, above all, the Catholic or non-Catholic non-governmental organizations).

1. Cf. F. PETRONCELLI HÜBLER, "La cooperazione episcopale nel continente africano," in *Studi in onore di G. Saraceni* (Naples 1988), pp. 245ff.

365 **§ 1. Legati pontificii, qui simul legationem apud Civitates iuxta iuris internationalis normas exercet, munus quoque peculiare est:**

1° promovere et fovere necessitudines inter Apostolicam Sedem et Auctoritates Rei Publicae;

2° quaestiones pertractare quae ad relationes inter Ecclesiam et Civitatem pertinent; et peculiari modo agere de concordatis aliisque huiusmodi conventionibus conficiendis et ad effectum deducendis.

§ 2. In negotiis, de quibus in § 1, expediendis, prout adiuncta suadeant, Legatus pontificius sententiam et consilium Episcoporum dicionis ecclesiasticae exquirere ne omittat, eosque de negotiorum cursu certiores faciat.

§ 1. A papal Legate who at the same time acts as envoy to the State according to international law, has in addition the special role:

1° of promoting and fostering relationships between the Apostolic See and the Authorities of the State;

2° of dealing with questions concerning relations between Church and State; especially, of drawing up concordats and other similar agreements, and giving effect to them.

§ 2. As circumstances suggest, in the matters mentioned in § 1, the papal Legate is not to omit to seek the opinion and counsel of the bishops of the ecclesiastical jurisdiction and to keep them informed of the course of events.

SOURCES: § 1: c. 267 § 1; *GS* 76; *SOE* X, 1
§ 2: *REU* 28; *SOE* X, 2

CROSS REFERENCES: cc. 3, 364, 459

COMMENTARY

Flavia Petroncelli Hübler

1. This norm requires distinct and well-differentiated explanations. The two activities discussed in paragraph one are defined as a "special role," but each of them establishes and entails the obligation to perform different duties. No mention is made of other offices, but it is evident that

there may be others, in connection with Church-State relations, according to the provisions of international law and by special mandate of the Holy See.

In observing the activities that are mentioned, it can be noted that no. 1° of this canon seems to complement no. 7° of the preceding canon: canon 364 speaks of the defense of the mission of the Church and of the Apostolic See with respect to the leaders; canon 365 calls for the promotion and fostering of relations between the Apostolic See and State authorities. Nevertheless, the "defense" action is situated within the dynamics of intra-ecclesial relations, and should be taken *consociata cum Episcopis actione.* On the other hand, the initiatives of promotion and fostering belong to the legates who are advised, in paragraph 2 of the canon in question, to request the opinion and the advice of the bishops of the territory as circumstances may warrant. The rationale for this distinction is based on valid considerations. The provisions of canon 364 require, above all, that they act in defense of the right of the Church to preach the Gospel (*GS* 76), an essentially ecclesial activity that, on a local level, devolves first upon the bishops, and with them, the representatives of the Pontiff. At the same time, it requires joint action by the bishops and the legates in defense of the activities of the Apostolic See.

Canon 365, for its part, contemplates other manifestations of Church-State relations. It does not exclude the need to defend the rights to religious freedom for citizens and institutions, which have also begun to be widely acknowledged in the international arena. Also, there is a call for initiatives geared toward the development of relations that the Apostolic See can carry out at a level different from that in which the bishops and the bishops' conferences operate. The present dimension of the Holy See in the international order and the conventions signed allow the use of diplomatic channels, and therefore the initiative of legates who may advise discretely or even in secret.

2. Nevertheless, the basic option leads to an assessment of the consistency of the requirements of paragraph 1 of this canon with the mission of the Church, and of whether inter-institutional relations sacrifice episcopal competencies or reduce the scope of the contribution that local episcopates can make to Church-State cooperation. The contractual practice of the Holy See, especially regarding concordats, has been clearly criticized in the post-conciliar period, but experience seems to confirm its appropriateness. The development of social doctrine has helped to clarify the scope and terms of the religious mission. At the same time, the option of having a presence at various levels, which the Church ensures, while adapting operative structures and methods to existing relations and systems in the international community, seems to produce positive results.[1]

1. Cf. F. PETRONCELLI HÜBLER, *Chiesa cattolica e Comunità internazionale: riflessione sulle forme di presenza* (Naples 1989).

Nonetheless, it is still essential that the Church present itself as "*universale salutis sacramentum*" (*GS* 45), and this entails, within the context we have just mentioned, careful discernment of the initiatives and capacity to manifest ecclesiastical communion.

The Code certainly offers few instruments that would serve as a guide for these objectives, while practice goes beyond legislative dictates. At this time, the bishops' conferences maintain international relations beyond the provisions of canon 459. There are conferences that reach accords with governments, where concordats and the internal laws of the State so allow; the bishops are the spokesmen with civil authorities. However, these relations are sufficiently coordinated with the relations maintained by the Apostolic See[2] and, in general, in all contacts, the religious value is evident. Specifically, the Pontiff's representatives ensure support for the local churches and the keeping of peace.

Therefore, instead of a radical change in the historical dimension, it seems desirable that there be options more geared towards discipline and a willingness to manifest a spirit of service in each of the forms of ecclesial presence.

2. Cf. G. FELICIANI, "Il ruolo delle Conferenze episcopali nella politica internazionale della Santa Sede," in *La politica internazionale della Santa sede 1965–1990* (Naples 1992), pp. 123ff.

366 Attenta peculiari Legati muneris indole:

1° sedes Legationis pontificiae a potestate regiminis Ordinarii loci exempta est, nisi agatur de matrimoniis celebrandis;

2° Legato pontificio fas est, praemonitis, quantum fieri potest, locorum Ordinariis, in omnibus ecclesiis suae legationis liturgicas celebrationes, etiam in pontificalibus, peragere.

Given the special nature of a Legate's role:

1° the papal Legation is exempt from the power of governance of the local Ordinary, except for the celebration of marriages;

2° the papal Legate has the right to perform liturgical celebrations, even in pontificalia, in all churches of the territory of his legation; as far as it is possible, he is to give prior notice to the local Ordinary.

SOURCES: c. 269 §3; *SOE* 1–5

CROSS REFERENCES: cc. 129 §1, 262, 357 §2, 1405

COMMENTARY

Flavia Petroncelli Hübler

This canon, which treats the prerogatives enjoyed by legates, determines the limits of the exercise of jurisdiction of orders, which canon 269 of the 1917 Code guaranteed as honors and privileges. The initial reference to the special nature of the office of legate demonstrates that the canon especially considers those who head missions.

The legates essentially hold the office of diocesan bishop; the see of the legation is exempt from the jurisdiction of the local ordinary, except with regard to the celebration of marriages, for which the norms in force must be observed—it is obviously a local exemption and not a personal exemption, as are other cases that are given in the Code (cf. cc. 262 and 357 § 2). The legate may perform liturgical celebrations in all of the churches of the territory, but, as far as it is possible, he must advise the local ordinary.

As under the 1917 Code, legates may only be judged by the Roman Pontiff (c. 1405). The present Code does not include other procedural rights that were found in the previous Code, nor does it regulate offenses for crimes against the person of the legate.

Neither is there anything established in the Code about precedence, but practice also takes into account diplomatic status in ecclesiastical ceremonies. Normally the Holy See sends nuncios to States where the rights of the deanship are recognized, already guaranteed by Regulations on Diplomatic Relations (Vienna, 1815) and practicable today where accepted by the accrediting State by virtue of articles 14,1 and 16,3 of the Convention on Diplomatic Relations (Vienna, 1961). Otherwise, legates are pronuncios who do not have rights to precedence, but who may be internally acknowledged as such in the Church.

Regarding their diplomatic relations, legates of the Roman Pontiff also enjoy numerous rights and exemptions ensured by the Convention of Vienna of 1961: inviolability of the see (art. 22); tax exemptions (art. 23); custodianship of archives and documents (art. 24); right to choose one's domicile and freedom of movement (art. 26); freedom of correspondence and inviolability of the diplomatic pouch (art. 27); exemption from the obligation to give testimony and removal from the criminal jurisdiction of the State for those exercising their mission (art. 31). In correspondence, legates are obligated to comply with the duties established in this convention, with the respective limits on activities intended to protect the interests of the accrediting State. All of this does not prevent the performance of merely ecclesiastical functions by representatives of the Pontiff, although in the past, regrettably, there have occasionally been diplomatic incidents;[1] rather, it only covers part of the initiatives geared towards supporting local churches.

In addition to diplomatic guarantees, the final record of the Helsinki Conference of 1975 on security and cooperation in Europe[2] has established new acknowledgments of freedom of contacts between representatives of religious denominations.

1. Cf. CH. ROUSSEAU, *Droit international public* (Paris 1974), t. II, pp. 353ff.

2. Cf. "Gli scambi d'informazione religiosa nell'atto finale di Helsinki," in *L'Osservatore Romano*, May 9, 1984; G. BARBERINI, "La partecipazione della Santa Sede alla Conferenza di Helsinki," in S. FERRARI-T. SCOVAZZI (dir.), *La tutela delle libertà di religione* (Padova 1988), pp. 149ff.

367 **Pontificii Legati munus non exspirat vacante Sede Apostolica, nisi aliud in litteris pontificiis statuatur; cessat autem expleto mandato, revocatione eidemintimata, renuntiatione a Romano Pontifice acceptata.**

The office of papal Legate does not cease when the Apostolic See is vacant, unless otherwise specified in the pontifical letter; it does cease, however, on the expiry of the mandate, on receipt by him of notification of recall, and on acceptance of his resignation by the Roman Pontiff.

SOURCES: c. 268; *SOE* III, 2; *RPE* 21

CROSS REFERENCES: cc. 184, 186–189, 401

COMMENTARY

Flavia Petroncelli Hübler

Owing to the stability of the office of legate, this canon provides that the office does not cease when the Apostolic See is vacant, unless otherwise specified in the apostolic letters of appointment. On the other hand, natural reasons for the office to cease are expiry of the time limit in the mandate, revocation, and resignation. The general norm that offices expire at age seventy-five applies.

SECTIO II
De Ecclesiis particularibus deque earundem coetibus

TITULUS I
De Ecclesiis particularibus et de auctoritate in iisdem constituta

SECTION II
Particular Churches and their Groupings

TITLE I
Particular Churches and the Authority Constituted Within Them

INTRODUCTION

Juan Ignacio Arrieta

In line with theological thinking consolidated in Europe during the first half of the twentieth century,[1] Vatican II, especially in its document on the Church, presents the Church founded by Christ as a communion of communities congregated around their own pastors, representatives of the Apostles (*LG* 23b). It is a statement in which Vatican II parallels the doctrine on the sacramental and collegial nature of the episcopate.[2]

1. Cf. J.R. VILLAR, *Teología de la Iglesia particular: el tema en la literatura francesa hasta el Concilio Vaticano II* (Pamplona 1989); O. GONZÁLEZ DE CARDENAL, "Génesis de una teología de la Iglesia local desde el Concilio Vaticano I al Concilio Vaticano II," in *Iglesias locales y catolicidad* (Salamanca 1992), pp. 33–78.
2. Cf. J.I. ARRIETA, "Consideración canónico-fundamental del concepto de Iglesia particular," in *Iglesia universal e Iglesias particulares. IX Simposio Internacional de Teología* (Pamplona 1989), pp. 283ff.

The central nucleus of the teachings of Vatican II in this respect—set forth in the Letter *Communionis notio* of the Congregation for the Doctrine of the Faith—is constituted with the presentation of the only historical reality that is the Church founded by Christ, manifested on two levels that are not wholly distinct, but rather immanent and complementary: a universal level—universal Church—and a particular level—particular Church—between which exists a permanent relationship of "mutual interiority" (*Communionis notio* 9).

These two levels in turn correspond to the double dimension, collective and individual, of the functions conferred by the sacrament of the episcopate. Just as Christ constituted over all the Church and under the authority of Peter one College, formed by many, to whom he individually entrusted the office of pastor of the various Christian communities, in the same way the only Church founded by Christ—a universal reality that exists ontologically and temporally prior to every individual particular church (*Communionis notio* 9)—appears and is manifested in a plurality of particular churches that are in communion with each other. In this way, the *communio episcoporum* of all the bishops in the Episcopal College is an instrument of the *communio ecclesiarum* in the only Church of Christ.

These are the subjects discussed in this title of the Code: the consideration of the communities of the faithful structured hierarchically (in any event, those that are not territorial are not mentioned); the regulation of the personal status of the bishops and the content of the episcopal office; and lastly, the resolution of any continuity problems that may arise in the exercise of the episcopal office.

In fact, these matters are fundamentally related because, although naturally the office of pastor is not the only subjective element of the ecclesiastical community, it is certainly the factor that structures that community hierarchically, and it forms it, as we said, in the *communio ecclesiarum*. Moreover, it is precisely the distinct manner in which, depending on the situation, the capital offices can be juridically configured in the various communities of the faithful, which leads to the existence of the different types of structures that we know in the Church: dioceses, prelatures, vicariates, etc. In fact, all those institutions arise in direct relation with a given see and Church—cathedral, procathedral, prelature, abbey, etc.—that the Roman Pontiff erects in giving hierarchical structure to the community, which is occupied by the person in charge of the community. The Church and see is another indication of the hierarchical manner in which these communities are organized. Their creation gives rise to an office that is of a specifically episcopal nature—the capital office, with abstraction of the personal status that the subject occupying it may have.[3]

3. Cf. J.I. ARRIETA, art. "Vescovi," in *Enciclopedia giuridica*, XXXII (Rome 1994).

As is known, in the documents of Vatican II, the expression "particular church" is used with two different meanings. While *Lumen gentium* 23 and *Christus Dominus* 11, for example, use this term for each of the autonomous communities of the faithful presided over by the respective bishop, the Decree *Orientalium ecclesiarum* understands particular church to mean the rite or ritual Church, in the sense of "a group of Christian faithful united by a hierarchy according to the norm of law which the supreme authority of the Church expressly or tacitly recognizes as *sui iuris*" (*CCEO* c. 27). Later, the Eastern Code stopped using the term "particular church" with that meaning, whereby the expression has overcome the ambiguity resulting from the texts of Vatican II.

Particular churches are therefore each of the communities of Christian faithful structured sacramentally around the respective bishop in which the one Church of Christ is manifested, appearing with all its essential elements (*LG* 23a; *Communionis notio* 7–9). Each of these communities is "a section of the people of God entrusted to a bishop to be guided by him with the assistance of his clergy" (*CD* 11a).

It is worth clarifying, however, that we are discussing a theological concept because, strictly speaking, there is no canonical concept of particular church. On the other hand, there is a canonical concept of diocese or prelature. What does exist is a canonical use[4] of the term "particular church" because while some have referred to its strictly theological sense—thereby applying it only to those juridical realities that theologically correspond to the base concept, other writers have used it in a generic or undifferentiated sense, referring to any territorial group of faithful entrusted to a bishop.

This is the use that the Code seems to make when it entitles chapter I of this section "particular churches," though proper and strict use of the term "particular Church" only refers to the dioceses (cc. 368, 369), which, on the other hand, could also be restrictive. In fact, canon 372 § 2 stresses the difficulty faced by the drafting committee and it has been reflected in these canons. By choosing to leave personal circumscriptions out of the chapter, apparently even against the wishes of the plenary meeting of the cardinals,[5] the list of entities contained in canon 368 (to whichthe denomination "particular Church" has been later extended, though the canon does not so state) was developed as a function of territory, a factor which had been made clear did not constitute the essential element of the concept of the particular Church.[6] The determinant weight that the territorial criterion had in the final draft of these canons hampered a careful consid-

4. Cf. J. HERVADA, *Elementos de derecho constitucional canónico* (Pamplona 1987), p. 298.
5. Cf. PCILT, *Congregatio plenaria diebus 20-29 octobris 1981 habita* (Typis polyglottis Vaticanis 1991), pp. 376–392, 399–417.
6. Cf. *Principles*, 8.

eration of the substantial differences in existence between the institutions mentioned here with the result that, in science[7] as well as in government,[8] it has been stressed that some of those structures cannot be considered as particular Churches in a strictly theological sense.

In fact, an analysis of each of the structures mentioned in canon 368 and of the other figures with the same juridical characteristics not included there, reveals, in the first place, that all or some of the subjective elements making up these communities—pastor, people, presbyterium—in almost every case, receive a juridical configuration different from what exists in the diocese which is the paradigm of the particular church. On the other hand, such differences are merely a reflection of the distinct degree of autonomy (juridical and pastoral) of those institutions with respect to the universal level of the Church (cf. commentary on c. 371), as well as of the distinct "presence" in each of them of the factors characteristic of the universal level: for example, because the capital office is the vicar of the Roman Pontiff, or because the clergy cannot be constituted without recurring to the *sollicitudo omnium ecclesiarum.* This reality emphasizes that, with respect to the structural and juridical dimension, the immanent relationship between the universal dimension and the particular dimension of the Church is expressed gradually according to the distinct types of community structures.[9]

As is seen, the concepts implied here still need necessary clarification, especially on a theological level. As the Catechism of the Catholic Church (no. 833) demonstrates, particular churches are dioceses or, in the Eastern discipline, eparchies. Therefore, when one wishes to remain in the formal field of canonical law, without prejudging the theological nature of the respective communities, it seems advisable to avoid the expression "particular church" in order to allude technically to what the autonomous communities forming part of the hierarchical structure of the Church have in common with the Code, and to use, on the other hand, a more secure category of profiles. In that sense, the concept of hierarchical structure, a canonical term equivalent to a public entity, is overly generic, given that in the Church there are also non-community entities—for example, bishops' conferences, the Synod of Bishops, etc.—that are also hierarchical structures, which does not imply that they must be included among the entities we are now discussing.

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7. Cf. E. CORECCO, "Iglesia particular e Iglesia universal en el Vaticano II," in *Iglesia universal*, pp. 92–95; J.L. GUTIÉRREZ, "Las dimensiones particulares de la Iglesia," ibid., pp. 251ff.

8. Cf. contribution of Cardinal A. SODANO, in *L'Osservatore Romano*, December 9, 1991, p. 7.

9. Cf. J.I. ARRIETA, art. "Confessioni religiose, II) Chiesa cattolica-diritto canonico," in *Enciclopedia giuridica*, IX updated (Rome 1993).

In spite of its general nature, the concept of "ecclesiastical circumscription," which in fact is the expression used in governmental practice,[10] is even less appropriate for designating these autonomous communities as a whole that are the entities of community hierarchical structure in which the people of God congregate around legitimate pastors. In any event, it is necessary to specify that circumscription should not be understood as an administrative territory or district. Rather, the concept should be understood in accordance with the communitarian perspective, and not territorial, of Vatican II as set forth in number eight of the principles approved in 1967 to guide the revision of the Code. Each circumscription entails the juridical individualization of a community of the faithful, structured sacramentally, and objectively delimited in order to be entrusted to a pastor.

In this respect, it can be stated more precisely that the first chapter of this title of the Code discusses, though not as exhaustively as we have done, the ecclesiastical circumscriptions or public entities of hierarchical community structure (dioceses, prelatures, etc.) distinguished from the ecclesiastical structures of government or public entities of the structuring of the "ordo" (for example, the Synod of Bishops, bishops' conferences, presbyteral councils, etc.), which are considered in other parts of the Code.[11]

The ecclesiastical circumscriptions are collegial corporations (c. 115) belonging to the hierarchical structure of the Church in which the people of God form a group. They are centers of functions of public juridical situations, which share in the achievement of the ends of ecclesiastical society in the manner that is adapted to the sacramental structure of the Church. Therefore, it is definitely the sacramental structure of the Church that indicates the elements forming this type of entity (bishop, presbyterium, faithful, etc., substantially enumerated in c. 369) and which indicates the basic juridical position (which may differ secondarily in the various types of circumscriptions) that corresponds to each of the subjective elements in the entity: mainly, the position of the bishop, which, as a pastor, primarily assumes and personifies the juridical situations attributed to the entity.

Any ecclesiastical circumscription is basically a portion of the people of God[12] that the supreme authority of the Church entrusts to the care of a pastor under the specific terms derived from the hierarchical subordination produced by the sacraments. Each of them, together with the fun-

10. Cf. G. FERROGLIO, *Circoscrizioni ed enti territoriali della Chiesa*, Turin s.f.; HERVADA, *Elementos*, pp. 293ff; E. TEJERO, art. "Circunscripciones eclesiásticas," in *Gran Enciclopedia Rialp*, V (Madrid 1984), pp. 663–664; G. FELICIANI, art. "Circoscrizioni ecclesiastiche," in *Enciclopedia giuridica*, VI (Rome 1988).

11. Cf. A.M. PUNZI NICOLÒ, *Gli enti nell'ordinamento canonico: I, Gli enti di struttura* (Padova 1983).

12. Cf. J. HERVADA, "Significado actual del principio de territorialidad," in *Fidelium iura* 2 (1992), pp. 229ff.

damental subjective elements of the social substratum of the Church created jointly by the sacraments of baptism and of the order (that is, the two terms of the *clerus-pleb* [clergy and faithful) binomial][13] should also include the formal reason of the hierarchical relationship between them, which is the sacramental nature, though the content of the relationship may vary according to the type of power granted to the pastor. This differentiates the ecclesiastical circumscriptions from communities that do not belong to the hierarchical structure of the Church.

The canons of chapter I of this title do not give a complete picture of the ecclesiastical circumscriptions now contemplated in the Code, but rather, as we have seen, only discuss the territorial circumscriptions. In order to reconstruct the full picture, it is necessary to take into account norms outside the Code, as well as exceptional acts revealing the governmental practice in this regard, remembering also that almost all the circumscriptions possess a certain degree of functional elasticity allowing them to adopt diverse forms in order to adapt to the pastoral needs of the Church in each location.[14]

With this in mind, we should mention three large categories of ecclesiastical circumscriptions according to the nature and juridical system applied thereto:

a) territorial circumscriptions of the ordinary system, subordinate to the Congregation for Bishops: 1) dioceses (c. 369), 2) territorial prelatures and 3) territorial abbeys (c. 370). A fourth special circumscription, namely, apostolic administrations, should also added to these three (c. 371 § 2);

b) circumscriptions of mission territories, subordinate to the Congregation for the Evangelization of Peoples: 1) mission dioceses, 2) apostolic vicariates, 3) apostolic prefectures (c. 371 § 1), and 4) missions *sui iuris;*

c) personal circumscriptions, which can be, according to the situation, of the ordinary system or of the territorial mission: 1) personal dioceses (c. 372 § 2), 2) personal prelatures (cc. 294ff), 3) military ordinariates, and 4) ordinariates for the care of the faithful of the Eastern Churches.

As we have indicated, from a juridico-technical point of view, the differences between the ecclesiastical circumscriptions basically have to do with the different manner in which the integral subjective elements of the *clerus-pleb* relationship are formed, whether due to a diverse degree of ecclesiastical development of the community or whether by a different makeup of the capital episcopal status of the pastor of the community.

13. Cf. idem, *Elementos*, pp. 163ff.

14. Cf. A. DEL PORTILLO, "Dinamicidad y funcionalidad de las estructuras pastorals," in *Ius canonicum* 9 (1969), pp. 305–329.

The diversity of these factors definitely entails a different juridical structuring of the community and, according to the situation, more or less autonomy of the circumscription with respect to the supreme authority of the Church.

In the first six canons, the chapter "particular churches" discusses what traditional doctrine refers to as major ecclesiastical circumscriptions, which must be distinguished from the groupings of the ecclesiastical circumscriptions considered in canons 431–434. The final canons of the chapter, on the other hand, refer to the so-called minor circumscriptions, that is, parishes and vicariates forane, that are the non-autonomous subdivisions of the major circumscriptions.

CAPUT I
De Ecclesiis particularibus

CHAPTER I
Particular Churches

368 **Ecclesiae particulares, in quibus et ex quibus una et unica Ecclesia catholica exsistit, sunt imprimisdioeceses, quibus nisi aliud constet, assimilantur praelatura territorialis et abbatia territorialis, vicariatus apostolicus et praefectura apostolica necnon administratio apostolica stabiliter erecta.**

Particular churches, in which and from which the one and only catholic Church exists, are principally dioceses. Unless it is established otherwise, the following are equivalent to a diocese: a territorial prelature, a territorial abbacy, a vicariate apostolic, a prefecture apostolic and a permanently established apostolic administration.

SOURCES: c. 215; SCPF Instr. *Antequam haec*, 21 iun. 1942 (*AAS* 34 [1942] 347–349); *LG* 13, 23, 26; *CD* 11; *AG* 19; SCEP Normae, 24 Apr. 1971, Introduzione, B; *CE* 2, 4

CROSS REFERENCES: cc. 331, 333 § 1, 336, 368–372, 381

COMMENTARY

Juan Ignacio Arrieta

Taking an expression from the Encyclical *Mystici Corporis*,[1] *Lumen gentium* 23, when setting forth the unity of the episcopate within the College of Bishops, presents the Church of Christ as a close communion of Christian communities united under the guidance of their pastors.

1. *MC*, *AAS* 35 (1943), p. 211.

Canon 368 now sets forth that description, identifying in a characteristic sense those communities, that is, the particular churches, with the juridico-canonical structure called the diocese.[2] Let us consider the different elements of the canon separately.

First, the norm declares the immanent[3] character of ecclesiastical divisions, more precisely, of the particular churches, with regard to the united whole that is the Church.

The principal juridical ramification of this theological statement is the impossibility of considering those two levels—the universal Church, located (from the governance perspective) in the central organization of the Church, and the particular church, located in the diocesan or local organization—as two completely autonomous levels.[4] This prevents direct application to the Church of some organizational models characteristic of civil society, for example, decentralization and autonomy. Such models entail a type of distinction, real and juridic, between the central and the local level, which does not occur in the same way in the Church as in civil society, due to the mutual interiority possessed by those two levels, the universal and the particular (*Communionis notio* 9). That is why applying civil techniques involved in the concepts of decentralization, etc., to the field of canon law needs to be adapted to the postulates of the sacramental structure of the Church.

The mutual interiority of which we are speaking is manifested in what we could call the community level (which would include the factors of spiritual content as a whole, alluded to in c. 369, part two, as well as in c. 205), as well as at the level of the exercise of the office of governance. At the community level, that relationship of immanence is stated in the expression "in quibus et ex quibus," which this canon takes from *Lumen gentium* 23. According to this expression, in each particular church the one Church of Christ is present and is manifested—"in quibus"—with all its marks and characteristics, through the communion in the factors that contribute to the structuring of the people of God and to the edification of the Church: communion in the same faith, the life-giving presence of the sacraments themselves, the union with the legitimate pastors. The second term of the expression—"ex quibus"—means, on the other hand, that the total unity that is the Church of Christ, that is, the universal Church ac-

2. Cf. *CCC* 833; P. LOMBARDÍA, *Lecciones de derecho canónico* (Madrid 1984), p. 111.

3. Cf. E. CORECCO, "Iglesia particular e Iglesia universal en el Vaticano II," in *Iglesia universal e Iglesias particulares: IX Simposio Internacional de Teología de la Universidad de Navarra* (Pamplona 1989), p. 89; A.M. ROUCO-VARELA, "Iglesia universal-Iglesia particular," in *Ius canonicum* 43 (1982), pp. 231ff; P. RODRÍGUEZ, *Iglesias particulares y prelaturas personales* (Pamplona 1986), pp. 145ff; H. LEGRAND, "Un sólo obispo por ciudad: tensiones en torno a la expresión de la catolicidad de la Iglesia desde el Vaticano II," in *Iglesias locales y catolicidad* (Salamanca 1992), p. 497.

4. Cf. K. MÖRSDORF, "L'autonomia della Chiesa locale," in *La Chiesa dopo il Concilio: Atti del congresso internationale di diritto canonico*, I (Milan 1972), pp. 170ff.

cording to *Communionis notio* 7, consists of the reciprocal communion of the particular churches, especially realized through the communion between their legitimate pastors—*communio pastorum*—and with the successor of Peter—*communio hierarchica*—(*Communionis notio* 12, 13).

The mutual interiority of the universal and local levels renders it inadequate to present the belonging of the faithful to the Church in terms of exclusivity or distinction.[5] As indicated in *Communionis notio* 10, the faithful belong to the universal Church immediately through baptism, and not mediately through their entry into a local church.[6]

We must still add two more explanations to this approach. In the first place, in a full and strict sense, and always according to the common doctrinal formulation of these concepts, "in quibus et ex quibus" apply to the proper churches in a special sense, given that only that community, and always with reference to the other immanent level, can be properly called a "church" because it is only in community that the structuring elements of the Church can be fully manifested. In the second place, even if in particular churches it is possible to individualize the elements characteristic of the one Church of Christ, none of them, taken alone, has any of the elements making up the Church. It is only obtained, as shown in the Catechism of the Catholic Church (no. 834), in communion with the other churches to the Church of Rome. We are speaking about the combination of the charisms of unity and security entrusted by Christ only to Peter and to his successors within the College. History has shown that weakening the actual communion with the visible center of the universal Church results in a split in the internal unity of the local church and the danger of a loss of freedom in the face of secularism (*Communionis notio* 8, 13).

The mutual interiority is also reflected, as we have said, at the level of the exercise of the office of governance, in that it prevents the making of a clear distinction of public functions and the assigning of them separately to the universal governance (pope and College of Bishops) on the one hand, and the local governance (diocesan bishop) on the other. In fact, in the Church, the power of the Roman Pontiff (and that of the Episcopal College) coincides in each ecclesiastical division with the power of the legitimate pastor appointed to lead it, in such a way that the juridical power of the bishop in his diocese can never be exclusive, but, although it is full and primary with respect to the *coetus fidelium* that has been assigned to him, it simultaneously coincides with the exercise of the public power of the governance assigned to the supreme authority.

5. Cf. G. Lo Castro, *Le prelature personali* (Milan 1988), pp. 259ff.
6. Cf. P. Rodríguez, *Iglesias particulares y prelaturas personales*, pp. 45ff and 94ff.

In this sense, the mutual interiority between the universal and the particular levels is manifested in the functions of the juridical control of guardianship[7] assigned to the central governmental authority, a consequence of the fact that the successor of Peter is the center of the communion and a guarantee of the unity of the Church. But it should also be noted that the responsibility of this central authority is not merely reduced to those functions of control since its power is immediate[8] and universal (c. 331). The Roman Pontiff is also free to take direct initiatives over the local churches aimed at positively promoting the elements of communion and unity of the Church, of which, as a matter of fact, the formal constituent of the primatial office rightly consists (*LG* 18ff; *PB* preamble, 2).

The duality of levels in governance creates the need to articulate on the administrative level procedures for decision making and action that 1) allow that duality of subjects that coincide in governance be put into effect according to the respective position at each level, and 2) allow an ordered governance of ecclesiastical society.

A different but not minor problem is that of whether the mutual interiority between the two levels, universal and particular, of the Church is manifested in the same way in all the ecclesiastical divisions (those mentioned here and the others referred to in the general introduction to the title), or if on the other hand, there is a gradation of this immanence, in connection with, as is obvious, the more juridical and structural aspects. An overall assessment of the applicable juridical norms seems to indicate, in fact, a certain gradation of that concrete relationship, manifested through an unequal presence in the particular divisions of factors that we could call specific to the universal level (*munus Petrinum, sollicitudo omnium Ecclesiarum*, mainly), as seen, for example, in the vicarious jurisdictions or in the mission structures needing the solidarity of all the churches, as was stated in the commentary of the title.

Canon 368 identifies the theological magnitude of "particular church" with concrete ecclesiastical divisions, the diocese. The other ecclesiastical divisions are considered as such only by assimilation. The scope of assimilation[9] stated in canon 368 is none other than the application of the juridical system established in the Code for the dioceses—that the universal legislator uses as a main point of reference in establishing general norms—to the other ecclesiastical divisions mentioned in this

7. Cf. J.B. D'ONORIO, *Le pape et le gouvernement de l'Église* (Paris 1992), p. 198.
8. Cf. K. MÖRSDORF, *L'autonomia della Chiesa*, p. 175.
9. Cf. C.J. ERRÁZURIZ, "Circa l'equiparazione quale uso dell'analogia in diritto canonico," in *Ius Ecclesiae*, 4 (1992), pp. 215–224; P. RODRÍGUEZ, *Iglesias particulares y prelaturas personales*, pp. 197–204.

canon, and the need to resort to other legislative techniques to make the divisions not mentioned in the canon part of that juridical system. Thus, in juridical practice subsequent to the Code, special legislation or statutory norms have been used to apply, in full or in part, the diocesan system of governance to some divisions not mentioned in canon 368, such as military ordinariates[10] or personal prelatures.[11]

10. Cf. *SMC*, art. I, §1; A. VIANA, "La asimilación o equiparación canónica de los ordinariatos militares con las dioceses," in *Iglesia universal*, pp. 305–316.

11. Cf. P. RODRÍGUEZ, *Iglesias particulares y prelaturas personales*, p. 123; A. DE FUENMAYOR, *Escritos sobre prelaturas personales* (Pamplona 1990), pp. 146ff; J. HERVADA, *Elementos de derecho constitucional canónico* (Pamplona 1987), pp. 308ff.

369 Dioecesis est populi Dei portio, quae Episcopo cum cooperatione presbyterii pascenda concreditur, ita ut, pastori suo adhaerens ab eoque per Evangelium et Eucharistiam in Spiritu Sancto congregata, Ecclesiam particularem constituat, in qua vere inest et operatur una sancta catholica et apostolica Christi Ecclesia.

A diocese is a portion of the people of God, which is entrusted to a Bishop to be nurtured by him, with the cooperation of the presbyterium, in such a way that, remaining close to its pastor and gathered by him through the Gospel and the Eucharist in the Holy Spirit, it constitutes a particular Church. In this Church, the one, holy, catholic and apostolic Church of Christ truly exists and functions.

SOURCES: *SC* 41; *LG* 25, 26, 28; *CD* 11; *PO* 4, 5

CROSS REFERENCES: cc. 266 § 1, 368, 372–373, 381–402, 790 § 1

COMMENTARY

Juan Ignacio Arrieta

The text of this canon is taken verbatim from the first paragraph of *Christus Dominus* 11. It contains the conciliar definition of the particular church, which sets forth the elements constituting the dioceses. A diocese[1] is a portion of the people of God, the full *cura animarum* of which is primarily entrusted, through the supreme authority of the Church to a bishop in order that, as its own pastor,[2] he may gather it in ecclesial communion with the help of the diocesan presbyterate.

The main characteristics of these divisions can be explained on the basis of the three following subjective elements: 1) the existence of a portion of the people of God adequately consolidated from the ecclesial point of view, and, as a general rule, territorially divided (c. 372 § 1); 2) the primary conferral of the pastoral care of the community to a diocesan bishop, fulfilled in the juridical manner that we shall see; 3) the designa-

1. Cf. M. PETRONCELLI, art "Diocesi," in *Novissimo digesto italiano*, V (Turin 1960), pp. 645–649; S. LANDOLFI, art. "Diocesi," in *Enciclopedia del diritto*, XII (Milan 1964), pp. 560–566; J.A. SOUTO, art. "Diócesis," in *Gran enciclopedia Rialp*, VII (Madrid 1984), pp. 767–768; G. FELICIANI, art. "Diocesi," in *Enciclopedia giuridica*, XI, (Rome 1989).
2. Cf. K. MÖRSDORF, "L'autonomia della Chiesa locale," in *La Chiesa dopo il Concilio. Atti del Congresso Internationale di Diritto canonico*, I (Milan 1972), pp. 172ff.

tion of a presbyteral *coetus* to cooperate in the pastoral duties of that bishop, in the capacity of the presbyterate of the diocese (cf. c. 266 § 1).

The other ecclesiastical divisions arise from the differences with the dioceses in any of those three elements:[3]

a) because, unlike the diocese, the *coetus fidelium* is not yet in existence, or is in the elementary stage of a congregation (as in the case of missionary structures), or it is made up of faithful who are primarily gathered in other *coetus fidelium* (as in the case of ordinariates or the personal prelatures);

b) because, unlike the dioceses, it is not required that the pastor of the *coetus* be a bishop or, if he is a bishop in fact, he is not a proper pastor, but a vicar of the Roman Pontiff, which would in turn imply a particular configuration of the structure as a function of the relationship with the primatial office (prefectures, vicariates and apostolic administrations). The difference can also arise from the fact that the pastor has been conferred as a functional jurisdiction over the *coetus fidelium* in certain matters, or the power must be exercised cumulatively with another bishop—military and ritual ordinariates;

c) because other ecclesiastical divisions differ from the diocesan model in which it is not possible to constitute a proper presbyterate, and they depend on other institutions of the Church—on other ecclesiastical divisions or, normally, on religious institutions—that, assigned by the Roman Pontiff, contribute what we could call the hierarchical component of the structure, that is, the clergy and, ordinarily, also the pastor;

d) or, lastly, because among the elements constituting the division, there are particular juridical dealings between the Holy See and a third entity of the Church, normally a religious institute or also another hierarchical division, to which the pontifical authority entrusts the structure and development of the community. This is the particular *commissio* system that, as we shall see, is characteristic of non-diocesan missionary institutions, and which, with a different structural authority, also exists in a good number of territorial prelatures.

In addition to these juridical features, canon 369 refers to other elements that make the diocesan community into a living body within the *communio ecclesiarum* and make it into a particular church. All of these factors, which can basically lead back to the elements of communion enumerated in canon 205, primarily correspond to the dioceses and the other particular churches, but are also features characteristic of the other ecclesiastical divisions that, of necessity, must be equally integrated into the *communio ecclesiarum.*

3. Cf. J.L. GUTIÉRREZ, "Las dimensiones particulares de la Iglesia," in *Iglesia universal e Iglesias particulares: IX Simposio Internacional de Teología* (Pamplona 1989), pp. 256ff.

The office of the diocesan bishop, that is, the episcopal see, is concomitant with the diocesan structure, of which it forms an integral and inseparable part. In this respect, an important juridical peculiarity of the diocese as regards the other ecclesiastical divisions, lies in the fact that the principle office must be entrusted to a bishop, who governs the diocese in his own name, as a diocesan bishop.[4] When established as a diocese, a Christian community achieves completeness on a structural level, and that completeness postulates adaptation to the sacramental order. With respect to the manner in which the office entrusted with the functions of leading and governing in the diocese is integrated, and taking into account that these *munera* are conferred by the rank of the episcopate, sacramental adaptation implies the conferral of the office to a bishop.

In any event, it is important to distinguish between the personal status of the pastor and the office he exercises. In all ecclesiastical divisions, not only in the dioceses, the clergy to whom the supreme authority of the Church entrusts the office of pastor in fact exercise episcopal duties, because by their nature they are the duties of guiding and governing an autonomous community of the faithful, regardless of the personal status, bishop or not, of the person legitimately entrusted with these functions.[5] They may very well be presbyters with the title of prelate, vicar apostolic, prefect apostolic, etc. History as well as current practice reflects that distinction between the personal status and the episcopal office (personal episcopal office and institutionalized episcopal office), though it is true that, for the sake of consistency, the ontological-sacramental factor is adapted to the offices that are juridically assigned to the subjects,[6] regardless of whether the ecclesiastical division they serve manifests the complete structure that is characteristic of the dioceses.

In 1909, Van Hove[7] pointed out the existence of four types of diocese in the Church: a) dioceses in the strict sense of the term, b) metropolitan dioceses, c) titular dioceses and d) suburbicarian dioceses. However, it would be more up-to-date to distinguish between dioceses with regard to their juridical system and their degree of autonomy within the *corpus ecclesiarum*. From this point of view, it is possible to distinguish three types of dioceses: a) dioceses of common law, b) dioceses of mission territory, and c) personal dioceses, according to c. 372 § 2.

4. Cf. J.I. ARRIETA, art. "Vescovi," in *Enciclopedia giuridica*, XXXII (Rome 1994); J. HERRANZ, *Studi sulla nuova legislazione della Chiesa* (Milan 1990), pp. 173ff; J.A. SOUTO, "La potestad el Obispo diocesano," in *Ius canonicum* 7 (1967), pp. 365ff.

5. Cf. J. HERVADA, *Pensamientos de un canonista en la hora presente* (Pamplona 1989), pp. 202–203.

6. Cf. V. GÓMEZ-IGLESIAS, "L'ordinazione episcopale del prelato dell'Opus Dei," in *Ius Ecclesiae* 3 (1991) pp. 251ff; J.R. VILLAR, "La capitalidad de las estructuras jerárquicas de la Iglesia," in *Scripta theologica* 23 (1991), pp. 961–982.

7. Cf. A. VAN HOVE, art. "Diocese," in *The Catholic Encyclopedia*, V (New York 1909), p. 4.

a) The dioceses of common law are, in practice, those dioceses that are subordinate to the Congregation for Bishops (*PB* 75ff). All that we have seen so far in this commentary applies to this type of diocese, and they are divisions that correspond to the full establishment of the ecclesiastical hierarchy in a territory.

b) The dioceses of mission territory are those dioceses that are established in the territories that, according to *Pastor bonus* 89, are subordinate to the Congregation for the Evangelization of Peoples. These are also dioceses in the strict sense of the word. They possess all the elements of canon 369, and they meet the theological definition of a particular church. However, their juridical system is not completely equal to the dioceses of common law[8] given that they are more subordinate to the Holy See, as shown in the authority of the Congregation for the Evangelization of Peoples. As is known, the juridical title of supreme direction and coordination of the missionary activity of the Church[9] corresponds to the Roman Pontiff and the College of Bishops (*AG* 29; c. 782).

Although the *commissio* system is not in effect in those mission dioceses (see commentary on c. 371), there is still an objective insufficiency of their own resources—material, economic, human, etc.—for wholly assuming the activity of the mission of the Church in the territory.[10] A concrete manifestation of the dependence of the mission dioceses is provided, for example, by the Instruction *Relatione in territoriis*[11] that indicates, when establishing the juridical framework for relations between the local ordinaries and the missionary institutes, that these institutes collaborate in a missionary diocese at the request of the bishop and under his authority, on the basis of a "mandate" conferred by the supreme authority of the Church according to the contract stipulated with the local bishop (cf. c. 790 § 1,2).

These divisions, moreover, are often governed by a particular juridical system, due to the inability to fully apply the common legislation of the Church.

c) Lastly, as a technical resource more than anything else (see introduction to this title) the Code foresees the possibility of establishing personal dioceses, according to canon 372 § 2, in areas where there are already territorial divisions. In that they are dioceses, thus canon 369

8. Cf. X. PAVENTI, "Adnotationes," in *Monitor ecclesiasticus* 79 (1954), pp. 197–198; A. SANTOS HERNÁNDEZ, *Derecho Misional*, VII (Santander 1962), p. 259.

9. Cf. L.M. DE BERNARDIS, "Missioni," in *Novissimo digesto italiano*, X (Turin 1964), pp. 767–769.

10. Cf. JOHN XXIII, Enc. *Princeps Pastorum*, November 28,1959, in *AAS* 51 (1959), pp. 839–840.

11. Cf. SCEP, Instr. *Relatione in territoriis*, February 25, 1969, in *AAS* 61 (1969), pp. 281–287.

would also have to apply, which would present specific problems resulting from the primary assignment of the *coetus fidelium* to a personal bishop.

Leaving aside the method of direct constitution of dioceses in places where previously the hierarchy of the Church would not have been constituted at all, there are three ways in which a diocese can be established: a) the elevation to diocese from a lower ecclesiastical division, from common law or missionary law; b) the division of one or more dioceses, which in turn gives rise to new dioceses; c) the merger of dioceses, which has traditionally been done in two different ways: as a merger *aeque principalis;* or as a merger *inaequalis*, either *per accessorium* or *per confusionem.*[12]

12. Cf. A. VAN HOVE, "Diocese," p. 3.

370 **Praelatura territorialis aut abbatia territorialis est certa populi Dei portio, territorialiter quidem circumscripta, cuius cura, specialia ob adiuncta, committitur alicui Praelato aut Abbati, qui eam, ad instar Episcopi dioecesani, tamquam proprius eius pastor regat.**

A territorial prelature or abbacy is a certain portion of the people of God, territorially defined, the care of which is for special reasons entrusted to a Prelate or an Abbot, who governs it, in the manner of a diocesan Bishop, as its proper pastor.

SOURCES: cc. *215* § 2, *319–327*; *CE* 2, 4; SCB *Notif.*, 17 oct. *1977*

CROSS REFERENCES: cc. 294–297, 368–369, 381 § 2, 450 § 1, 454 § 1

COMMENTARY

Juan Ignacio Arrieta

This canon discusses two different ecclesiastical divisions: the territorial prelature and the territorial abbacy. Let us look at them separately.

1. *Territorial prelatures*

Territorial prelatures are communities of hierarchical structures entrusted to a member of the clergy, not necessarily a bishop, who governs them as a proper pastor *ad instar* of the diocesan bishop.[1] Their historical origin seems to lie in the jurisdiction of the archdeacon that some chapters possessed over the neighboring towns that, over time, consolidated as a jurisdiction exempt from that which the bishop possessed over the entire diocese. That explains, on the other hand, the denomination prelatures *nullius dioeceseos* that these structures received in the discipline of the 1917 Code (cf. cc. 319ff) due to their exemption from diocesan jurisdiction.

Although, as we shall see, there are exceptions, they are usually territorial ecclesiastical divisions whose *portio populi Dei* have been

1. Cf. G. DALLA TORRE, art. "Prelato e prelatura," in *Enciclopedia del diritto*, XXXIV (Milan 1985), pp. 973–981; J. HERVADA, *Pensamientos de un canonista en la hora presente* (Pamplona 1989), pp. 213ff; A. VERMEERSCH-L. CREUSEN, *Epitome iuris canonici*, I (Brussels 1933), pp. 333–336; X. WERNZ-P. VIDAL, *Ius canonicum*, II (Rome 1943), pp. 704–714.

segregated from a diocese of the regular system, by reason of particular pastoral difficulties. From a formal point of view, the territorial prelature would thus represent a case of "regression"—using a different term—of the new autonomous *coetus* that is created, as a preliminary transitory stage in becoming a diocese, when that *coetus* meets the proper pastoral conditions. In the meanwhile, even if it is not a general rule, the Holy See usually entrusts the care of the prelature, based on an accord established for this purpose with the Congregation for Bishops, to a missionary religious institute or to a diocese or other division. The system is analogous to that of the *commissio* (see commentary on c. 371), which exists in the mission structures. In the case of the territorial prelatures, however, the intervention of the Holy See does not give rise to a special stable connection with the primatial office through vicarious means.

At times, the technical formula of the territorial prelature has served to configure pastoral realities that did not find an appropriate solution among the existing canonical institutes. This is the case with the prelature of Pontigny in France, which came from the transformation of the preexisting association of priests of the Mission of France into an ecclesiastical division.[2]

According to canonical tradition, and unlike what occurs in dioceses, the office of the prelate does not necessarily have to devolve upon a bishop, and even if it does, that does not necessarily imply that his successor must also have that rank. Nonetheless, since 1977,[3] the territorial prelates are usually ordained bishops, though there are exceptions, receiving the title not of a diocese *extincta* or *in partibus infidelium*, but of bishop-prelate of the respective territorial prelature, thus establishing the criterion of succession in the see. This change seems to reflect the conviction that the territorial prelature satisfies the theological elements of a "particular Church."

The juridical structure of the territorial prelature is basically analogous to that of the diocese, albeit adapted to the developmental situation of each territory. The documents of erection of these divisions demonstrate that the territorial prelatures have:

a) "prelatial see"[4]—the terminology fluctuates, however, because at times it is called the episcopal see;[5]

b) "prelatial church"—sometimes called a cathedral church;

2. Cf. P. VALDRINI, "La nouvelle loi propre de la Mission de France," in *L'Année canonique* 31 (1988), pp. 268–289; D. LE TOURNEAU, "La Mission de France: passé, présent et avenir de son statut juridique," in *Studia canonica* 24 (1990), pp. 357–382; J. CANOSA, "La legge propria della 'Mission de France'," in *Ius Ecclesiae* 3 (1991), pp. 767–780.

3. Cf. SCB, *Notif. Ho l'onore*, October 17, 1977, in *Comm.* 9 (1977), p. 224.

4. Cf. *AAS* 81 (1989), p. 6.

5. Cf. *AAS* 82 (1990) p. 538.

c) they are assigned to an ecclesiastical province, unlike what was prescribed in the 1917 Code;[6]

d) they must establish the other governmental offices and structures characteristic of the dioceses: vicars general, college of consultors, etc.;

e) the prelature must provide for the support of the prelate; and

f) it has a proper presbyterate of incardinated priests, etc.

Pursuant to canon 450 § 1, territorial prelates belong as a matter of law to the respective bishops' conferences, with a deliberative vote, according to canon 454 § 1.

The erection of territorial prelatures is accomplished through a pontifical bull, an apostolic constitution, signed by the Cardinal Secretary of State and the prefect of the Congregation of Bishops. The 2003 *Annuario pontificio* identifies forty-eight territorial prelatures.[7] Though, as an exception, some of them are in missionary territories, they are in fact subject to a different governance than that of the other ecclesiastical divisions in the area, also subordinate to the Congregation for Bishops.

2. *The territorial abbeys*

The territorial abbeys are territorial ecclesiastical structures in which the pastoral care of a portion of the people of God is entrusted to the abbot of a monastery and to the regular clergy assigned to it.[8]

The characteristics of the subjective elements of this community would be the following:

a) portion of the people of God territorially delimited around an abbatial monastery;

b) abbot-ordinary, as the proper pastor with ecclesiastical jurisdiction *ad instar episcopi dioecesani;* the office of pastor devolves upon the person appointed by the Roman Pontiff, also pursuant to the proper law of the monastery with respect to the procedure of canonical provision; and

c) regular clergy assigned to the monastery and intended for the pastoral care of the faithful. The abbacy may also, in any event, incardinate secular clergy, as occurs in various concrete situations.

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6. Cf. DALLA TORRE, "Prelato e prelatura," p. 975.
7. Cf. *Annuario pontificio* 2003, p. 940ff, and for historical observations, p. 1684.
8. Cf. J. BANCHER, art. "Abbaye nullius," in *Dictionnaire de droit canonique*, I (Paris 1935), col. 16–29; C. TESTORE, art. "Abate," in *Enciclopedia cattolica*, I (Vatican City 1948), col. 9–16; G. FERRIOGLIO, art. "Abbazia," in *Enciclopedia del diritto*, I (Milan 1958), pp. 51–56; L. MULLER, "La notion canonique d'abbaye 'nullius'," in *Revue de droit canonique* 6 (1965), pp. 115–144; G. LOBINA, "Le abbazie nullius: note giuridico-pastorali," in *Benedictina* 24 (1977), pp. 2–17.

The 2003 *Annuario pontificio* includes thirteen territorial abbeys.[9] In the motu proprio *Catholica Ecclesia*, the Holy See stated the desire not to erect new structures of this type in the future and to convert those in existence to other types of ecclesiastical divisions. The same motu proprio also declared the intention not to proceed in the future with episcopal ordination of territorial abbots, though this was not maintained when circumstances warranted proceeding otherwise.

These divisions are subordinate to the Congregation for Bishops, except for two, which are under the jurisdiction of the Congregation for the Evangelization of Peoples, and the abbey of Grottaferrata, which is subordinate to the Congregation for the Eastern Churches. Some of these abbeys are immediately subject to the Holy See; others are classified as suffragans of metropolitan churches. In accordance with canon 450 § 1, the respective abbots participate as a matter of law in the meetings of the respective bishops' conferences with a deliberative vote according to canon 454 § 1.

9. Cf. *Annuario pontificio* 2003, pp. 952ff, and for historical observations, p. 1684.

371 **§ 1. Vicariatus apostolicus vel praefectura apostolica est certa populi Dei portio quae, ob peculiaria adiuncta, in dioecesim nondum est constituta, quaeque pascenda committitur Vicario apostolico aut Praefecto apostolico, qui eam nomine Summi Pontificis regant.**

§ 2. Administratio apostolica est certa populi Dei portio, quae ob speciales et graves omnino rationes a Summo Pontifice in dioecesim non erigitur, et cuius cura pastoralis committitur Administratori apostolico, qui eam nomine Summi Pontificis regat.

§ 1. A vicariate apostolic or a prefecture apostolic is a certain portion of the people of God, which for special reasons is not yet constituted a diocese, and which is entrusted to the pastoral care of a Vicar apostolic or a Prefect apostolic, who governs it in the name of the Supreme Pontiff.

§ 2. An apostolic administration is a certain portion of the people of God which, for special and particularly serious reasons, is not yet established by the Supreme Pontiff as a diocese, and whose pastoral care is entrusted to an apostolic Administrator, who governs it in the name of the Supreme Pontiff.

SOURCES: § 1: c. 293 § 1; SCPF Instr., 21 iun. 1942 (*AAS* 34 [1942] 347–348)

CROSS REFERENCES: cc. 331, 333, 368–369, 378 § 2, 381 § 2, 400 § 3, 420–421, 450 § 1, 495 § 2, 502 § 4

COMMENTARY

Juan Ignacio Arrieta

Canon 371 contemplates two types of institutions with different natures and meanings. In paragraph 1 two ecclesiastical missionary divisions are discussed; paragraph 2 regulates a special division resorted to for reasons of appropriateness, not strictly in connection with the ecclesiastical dimension of the community in question.

1. *Mission structures*

Although canon 371 only enumerates two, there are four ecclesiastical mission divisions now defined in the canonical order (see introduction to this title): a) the mission diocese; b) the vicariate apostolic; c) the prefecture apostolic; and d) the mission *sui iuris*. Having already discussed the characteristics of the mission dioceses (see commentary on c. 369), let us now consider the other three types of mission divisions (*AG* 19ff).

The central point that must be borne in mind when considering non-diocesan missionary structures lies in the fact that these territorial institutes are organized on the basis of a *commissio* system by which the Roman Pontiff—who is in charge, as we have stated, of the supreme leadership of the missionary activity of the Church—entrusts to a religious institute or society, or even to a given particular church (*PB* 89), the governance and pastoral care in the mission territory. This perspective seems to be the determining factor for the juridical and theological classification of these divisions.

The *commissio* establishes a vicarious relationship between the Roman Pontiff and the hierarchy of the structure in question, in the sense that those divisions must necessarily be considered the vicarious development of the supreme power of the successor of Peter. Moreover, the act of organizing the mission structure with elements belonging to other dioceses or, especially, to religious institutes, makes any theological classification of these divisions as particular churches, at least in the strict sense, a bit abstract. That is why, when canon 371 describes those entities as portions of the people of God, entrusted to the vicar apostolic or prefect apostolic, in fact, it is indicating something common to all territorial or personal division—the fact of establishing a Christian community entrusted to a pastor, without tackling what juridically specifies these entities, which is their structural link to the primatial office and the *commissio* system on behalf of another church institution.[1]

Having noted this problem, let us now consider each of the three vicarious mission structures established in canon law.

a) *Mission sui iuris*

The mission *sui iuris* (the 2003 *Annuario pontificio*[2] lists eleven missions of this type) is an autonomous mission territory entrusted to a

1. Regarding the rule of *commissio*, cf. I. Ting Pong LEE, "De iuridico commissionis systemate in missionibus," in *Commentarium pro religiosis et missionariis* 54 (1973), pp. 151–167 and 238–258; and more recently J. GARCÍA MARTÍN, "El sistema de comisión desde el pontificado de Gregorio XVI hasta el Código de derecho canónico–1917: nota histórica," in *Commentarium pro religiosis et missionariis* 65 (1984), pp. 355ff.

2. Cf. *Annuario Pontificio*, 2003, pp. 995ff, and for historical observations, p. 1687.

missionary religious institute and put under the direction of an ecclesiastical superior, belonging to that institute, to whom the mission stations and personnel of the territory are subordinate.[3] Usually they are territories that have split off from an ecclesiastical missionary division, and in that sense they are somewhat similar to territorial prelatures. They are erected, by virtue of special authority,[4] by decree of the Congregation for the Evangelization of Peoples, the dicastery to which they are subordinate.

They are governed by the norms of universal law and any special norms established in each case. Although it is a vicarious jurisdiction, in the act of erection, a mission *sui iuris* is aggregated to a given ecclesiastical province, and is no longer situated outside of the general rule of those jurisdictions.

b) *Prefecture apostolic*

The prefecture apostolic is an ecclesiastical missionary division, the technical elements of which have been mostly formed during the second half of the nineteenth century, as a stage prior to the erection of vicariates apostolic.[5] The prefecture apostolic was definitively defined with its current characteristics in canons 293ff of the 1917 Code.

Current discipline considers the prefecture apostolic as the first stage of establishing a hierarchical organization of the Church in mission territories. As a Christian community, canon 371 conceives of it as a portion of the people of God entrusted to the pastoral care of a prefect apostolic, usually without the rank of bishop, who governs it in the name of the Roman Pontiff and, therefore, with vicarious power. The description in this case does not indicate very much about the specifics of the entity. The forty-two prefectures apostolic included in the 1993 *Annuario pontificio*,[6] are subordinate to the Congregation for the Evangelization of Peoples, all of which are entrusted to religious institutes within the *commissio* system. By common law, the prefects are not obligated to perform *ad limina* visits (c. 400 § 3), though this obligation could be imposed by special law.[7]

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3. Cf. A. SANTOS HERNÁNDEZ, *Derecho misional*, VII (Santander 1962), pp. 299ff.
4. Cf., for example, *AAS* 76 (1984), p. 304.
5. Cf. SANTOS HERNÁNDEZ, *Derecho misional*, pp. 295ff; R. NAZ, art. "Préfet apostolique," in *Dictionnaire de droit canonique*, VII (Paris 1965), col. 166–176; A. VERMEERSCH-L. CREUSEN, *Epitome iuris canonici*, I (Brussels 1933), pp. 316–331; X. WERNZ-P. VIDAL, *Ius canonicum*, II (Rome 1943), pp. 687–700.
6. Cf. *Annuario pontificio*, 1993, pp. 1060ff, and for historical observations, p. 1711.
7. Cf. I. Ting Pong LEE, art. "Prefettura apostolica e prefetto apostolico," in *Enciclopedia cattolica*, IX (Vatican City 1952), col. 1923; idem, "Praefecti apostolici privilegia," in *Commentarium pro religiosis* 57 (1976), pp. 39–48.

c) Vicariates apostolic

In their present form, the vicariates apostolic have their origin in the seventeenth century as a way of assuring protection from the right of patronage, mainly in Portugal, and also in Spain. In order to obtain more freedom in the appointment of prelates and in the establishment of their sees, the Apostolic See resorted to the system of sending prelates, usually bishops, in the capacity as vicars of the Roman Pontiff, to the missionary geographic areas.[8]

Like the prefecture apostolic, from which a subsequent degree of ecclesiastical development is constituted, canon 371 conceives of the vicariate apostolic as an ecclesiastical missionary division, the pastoral care of which is entrusted to a vicar apostolic, usually an ordained bishop, though with a titular see, compared to the diocesan bishop in law (c. 381 § 2). Unlike the prefect, the vicar apostolic is obligated to make visits *ad limina*, although he can do so through a proxy (c. 400 § 3). The 1993 *Annuario pontificio* enumerates 77 vicariates apostolic.[9] Some vicariates apostolic, due to their territory, are subordinate to the Congregation for the Eastern Churches; however, the general rule is subordination to the Congregation for the Evangelization of Peoples.

d) *Norms common to prefectures apostolic and vicariatse apostolic*

A similar juridical system is applied to the prefecture and the vicariate. The prefect and vicar apostolic, usually members of the religious institute to which the division is entrusted, are designated by the Roman Pontiff in accord with the system of provision established in the *Norms for the Promotion of Candidates to the Episcopal Ministry in the Latin Church*, article 1, 3°. The *Norms* recognize that the general superiors of the institutes of the mission territory have the faculty to present candidates to occupy the office of vicar or prefect, always without prejudice to the right of the Holy See to assess the suitability of the person proposed (c. 378 § 2).

The juridical power of the vicar and prefect apostolic is vicarious by reason of the special dependence of this type of ecclesiastical division on the Roman Pontiff, who is, in fact, the proper pastor of the vicariate and of the prefecture. That is why neither the vicariates apostolic nor the prefectures apostolic form part of the ecclesiastical provinces, and they cannot be called suffragans of a metropolitan see,[10] though they are aggregated to

8. Cf. SANTOS HERNÁNDEZ, *Derecho misional*, pp. 284ff; X. PAVENTI, "Adnotationes," in *Monitor ecclesiasticus* 79 (1954) pp. 196–201; D. STAFFA, art. "Vicario apostolico," in *Enciclopedia cattolica*, XII (Vatican City 1954), col. 1358–1361.

9. Cf. *Annuario pontificio*, 1993, pp. 1043ff, and for historical observations, p. 1711.

10. Cf. R. NAZ, art. "Vicaire apostolique," in *Dictionnaire de droit canonique*, VII (Paris 1965), col. 1479–1487; L.M. DE BERNARDIS, "Missioni," in *Novissimo digesto italiano*, X (Turin 1964), p. 768; A. VERMEERSCH-L. CREUSEN, *Epitome iuris canonici*, I, pp. 331–333; X. WERNZ-P. VIDAL, *Ius canonicum*, II, pp. 701–704.

a province. For a similar reason, neither the vicar nor the prefect has, strictly speaking, a *cathedra* or cathedral church.[11] Their respective churches are usually referred to in the official documents as pro-cathedrals. On the other hand, these pastors belong in their own right to the bishops' conference of the country (c. 450 § 1), enjoying a deliberative vote just as the diocesan bishops (c. 454 § 1).

Immediately after taking office, the prefect apostolic and the vicar apostolic have the duty to appoint a pro-prefect or a pro-vicar, with the duty of assuming the governance of the division during the period of vacancy of the see (c. 420). In these structures, moreover, there is no presbyteral council, but a mission council must be established in its place (c. 495 § 2) to carry out the duties assigned by law to the college of consultors (c. 502 § 4).

Another peculiarity of these entities, also due to the vicarious nature of the power of their respective pastors, lies in the fact that in the place of the vicar general—which office is technically exercised by the proper apostolic vicar or prefect as regards the pope—has been normally vested in a vicar delegate since 1919,[12] an office formed, not from ordinary power, but as a power delegated *ad personam.*

The prefectures and vicariates apostolic are canonically erected by the Apostolic See, pursuant to canon 373, usually at the request of the religious institute or diocese to which the territory is entrusted.[13]

2. *Apostolic administration*

Before directly considering the content of canon 371 § 2, it is necessary to make a distinction. Speaking of the apostolic administration, we must distinguish two different juridic figures that have the same name: a) an ecclesiastical division, called an apostolic administration, and b) a juridical situation in which the see of any ecclesiastical division can be temporarily found, either with the see occupied or vacant. Let us begin with the latter.

a) *Apostolic administration of the see*

The apostolic administration, as a temporary situation in the see, is a legal institute belonging to the category of delegation, which emphasizes the centralized character of Church structure and the fullness of the power of the Roman Pontiff, sanctioned in paragraph 1 of canon 333. The apostolic administration of the see consists of direct intervention of the Apostolic See in the system of governance of an ecclesiastical division

11. Cf., for example, *AAS* 76 (1984), p. 949.
12. Cf. SCPF, Let., December 8, 1919, in *AAS* 12 (1920), p. 120.
13. Cf. SCPF, Instr., June 21, 1942, in *AAS* 34 (1942), pp. 347–349.

through the appointment of a subject, named the apostolic administrator, either to govern the see in place of the titular head (apostolic administration *sede plena*), or to take charge of the vacant see (apostolic administration *sede vacante*), in this way bypassing the mechanisms of normal succession established by law for these cases (cf. cc. 416–430).

The apostolic administrator[14] can either be entrusted with the entire diocese or only a portion of it. Moreover, the appointment can be for a certain period of time or for an indefinite time. There can also be various reasons why the Holy See intervenes: from deficiencies in diocesan governance to evidence of insubordination in the diocesan community; from political reasons that call for a separation from the diocesan bishop, without replacing him in the office, to difficulties and quarrels caused by a vacancy in the see.[15]

Although in the case of a vacancy in the see, the offices of both coincide, the figure of the apostolic administrator must be distinguished from the diocesan administrator, designated according to canons 421ff by the college of consultors to govern the diocese during the interim period.

b) *Apostolic administration*

Canon 371 § 2 refers to the apostolic administrations that are particular territorial ecclesiastical divisions stably erected by the Apostolic See and entrusted to the pastoral care of an apostolic administrator, who governs them in the name of the Roman Pontiff.

The erection of this entity takes place, when, due to serious reasons, it is not possible to constitute a division of common law, and at the same time, it is necessary to provide for the pastoral care of the faithful in the area. According to the most recent practice there are mainly two reasons leading to the establishment of this type of division. Some are political, when the civil authorities deny the establishment of ordinary church structures; others are ecumenical, when the establishment of the ordinary Catholic hierarchy in a given place could be less consistent with the ecumenical doctrine of the Catholic Church itself. Thus, on the occasion of the erection in 1991 of three new apostolic administrations in the former Soviet Union,[16] the Holy See determined that this was an attempt to avoid erection of particular Catholic churches where there were already particular churches erected by the Orthodox Patriarch of Moscow:[17] in fact, the apostolic constitutions of erection of these divisions do not contain, for example, the erection of a church-see of the apostolic administrator.

14. Cf. G. OLIVERO, art. "Amministratore apostolico," in *Enciclopedia del diritto*, II (Milan 1958), p. 128; E. MANGIN, art. "Administrateurs apostoliques," in *Dictionnaire de droit canonique*, I (Paris 1935), col. 181–192.
15. Cf. G. OLIVERO, "Amministratore apostolico," pp. 128–129.
16. Cf. *AAS* 83 (1991), pp. 544–548.
17. Cf. contribution of Card. A. SODANO, in *L'Osservatore Romano*, December 9, 1991, p. 7; Also cf. *Communionis notio* 17.

The apostolic administrations could hardly be considered as particular churches. They must be considered rather as particular provisional ecclesiastical divisions allowing for the Church's pastoral care of the faithful in a given territory. Similar to the non-diocesan mission structures, the proper pastor of the apostolic administration is the Roman Pontiff, from whom the administrator, not necessarily invested with the status of bishop, possesses the power vicariously.

372 **§ 1. Pro regula habeatur ut portio populi Dei quae dioecesim aliamve Ecclesiam particularem constituat, certo territorio circumscribatur, ita ut omnes comprehendat fideles in territorio habitantes.**

§ 2. Attamen, ubi de iudicio supremae Ecclesiae auctoritatis, auditis Episcoporum conferentiis quarum interest, utilitas id suadeat, in eodem territorio erigi possunt Ecclesiae particulares ritu fidelium aliave simili ratione distinctae.

§ 1. As a rule, that portion of the people of God which constitutes a diocese or other particular Church is to have a defined territory, so that it comprises all the faithful who live in that territory.

§ 2. If however, in the judgement of the supreme authority in the Church, after consultation with the Bishop's Conferences concerned, it is thought to be helpful, there may be established in a given territory particular Churches distinguished by the rite of the faithful or by some other similar quality.

SOURCES: § 1: c. 216; *CD* 22; *ES* I, 4; *DPMB* 172
§ 2: Pius PP. XII, Ap. Const. *Exsul familia*, 1 aug. 1952, Tit. alter, IV (*AAS* 44 [1952] 699–700); *OE* 4; *CD* 23, 43; Princ. 8

CROSS REFERENCES: cc. 30, 102 § 2, 271 § 2, 294–297, 368–369

COMMENTARY

Juan Ignacio Arrieta

1. Canon law establishes the territorial principle as the basic criterion for the organization of ecclesiastical structures for the pastoral care of the Christian faithful. It is the general and primary criterion for dividing Christian communities, for determining the obligations of the respective pastors with regard to a *coetus fidelium*, and for indicating in each case the subjective end of the juridical relationship of a subject of the Church, when specifically indicating the pastor of each of the faithful.

However, this does not mean that territory is the constitutive element of the concept of Church, or that it must be an essential factor of its

pastoral structures.[1] Vatican II tried to stress the community element of ecclesial society from a perspective in which the territorial factor is an incidental element, functionally useful in determining ecclesiastical communities. Eloquent proof of this is the definition of diocese set forth in *Christus Dominus* 11 in which the territorial element is not present. In line with this community perspective, the Code uses the expression "portion of the people of God" instead of the term "ecclesiastical division." Nonetheless, in the introduction to this title I, we find justification for the usefulness of this latter expression, once it is devoid of any territorial connotations it might include.

Once canon 372 sets forth the basic territorial criterion, it also establishes channels for the establishment of personal ecclesiastical divisions based on rites or other similar reasons. In this regard, the Code indicates pastoral utility as a criterion for the establishment of personal divisions, which must be assessed by the supreme authority of the Church after reviewing a report from the bishops' conference in question.

The establishment of personal ecclesiastical divisions over a general organization on a territorial basis naturally presents technical problems in pastoral coordination, the interrelation of the particular juridical order, or merely organization. Thus, due to this interrelation, one member of the faithful can, for example, belong to two different structures, one territorial and one personal, occupying in each an equal or different juridic position. For the same reason, two different ecclesiastical authorities can legitimately intervene over the same faithful with power that, depending on the situation, would be either concurrent, subsidiary or complementary. These are all matters that must be determined by any norms provided in each case for coordinating the territorial and personal structures.

At other times, issues arise about mere organizational coordination. For example, taking the issue in isolation, military ordinariates are not immediately assigned to one of the ecclesiastical provinces, or of the ecclesiastical regions of the country. Similarly, the prelate of a personal prelature which is not a definite division of a given country is not immediately assigned to a given bishops' conference. However, this does not prevent an acknowledgment that personal structures also include juridically relevant factors that are found territorially—see and church of the pastor, curia of the division, seminary, etc.—and which would have to be the basis for determining in each case the coordinating structures to which these pastors must be assigned.

In any event, it is worth noting that problems with the interrelationship of particular statutes can also be noted between territorial divisions. For example, this is the case with the quasi-domicile of canon 102 § 2 by which a member of the faithful belongs to two different dioceses, subject

1. Cf. *Principles,* 8; F.J. WERNZ-P. VIDAL, *Ius canonicum,* II (Rome 1943), pp. 457–458.

to two different ecclesiastical authorities; or the case of aggregation from canon 271 § 2 by which a member of the clergy enters into a juridical relationship with a new diocese without severing the connection with his proper diocese and with his proper bishop, etc.

Based on § 2 of canon 372, the personal criterion for determining the portion of the people of God can give rise to different types of ecclesiastical divisions, some expressly considered in the Code, and others created by legislation outside the Code or by the practice of governance: a) personal dioceses (see commentary on c. 369); b) personal prelatures, regulated by canons 294–297; c) military ordinariates; d) ordinariates for the care of the faithful of another rite. We will consider here just these two latter structures.

2. Military ordinariates[2] are complementary ecclesiastical divisions with a personal basis in which the *cura animarum* of those who, according to the laws of each country, are subject to military jurisdiction or related to it by reason of occupation or family is conferred on a member of the clergy, normally a bishop (*SMC* II, 1). The faithful of the ordinariate, however, still belong to the particular church that is theirs by reason of domicile (*SMC* IV, 3).

The Apostolic Constitution *Spirituali militum curae* is the legal framework that outlines the characteristics common to these community structures. The statutes of each ordinariate is given in a general decree (c. 30) of the Congregation for Bishops, or of the Congregation for the Evangelization of Peoples, as applicable (*SMC* XI), and adapts the legal framework to the pastoral and legislative situation of each location, resulting in concrete structures with varying emphases from one to the other.[3] *Spirituali militum curae* has not foreseen the situation, which is increasingly common, with multinational military ordinariates, the eventual constitution of which will pose specific organizational problems.

The legal framework establishes juridical assimilation of the ordinariates into dioceses (*SMC* I, 1). However, this does not imply that the dioceses are classified as "particular churches" in the strict sense. In fact, the decrees of *recognitio* of the statutes of the ordinariates usually contain a tolerance clause that, explaining that there is no similarity between said institutions, allows the use of the term "military diocese," or even "military archdiocese," to designate the ordinariate, only for the purposes of pastoral or administrative utility in each country.

2. For previously defined military vicariates, cf. SCCong, Instr. *Solemne semper*, April 23, 1951, in *AAS* 43 (1951), pp. 562–565.

3. Cf. E. BAURA, *Legislazione sugli ordinariati castrensi* (Milan 1992), pp. 15ff; A. VIANA, *Territorialidad y personalidad en la organización eclesiástica: el caso de los ordinariatos militares* (Pamplona 1992); J.I. ARRIETA, "El Ordinariato castrense. (Notas en torno a la Const. Apost. *Spirituali militum curae*)," in *Ius canonicum* 26 (1986), pp. 731–748.

The power of the military ordinary is proper and ordinary, although cumulative with that of the diocesan bishop (*SMC* IV, 3). In the areas reserved for the military, however, the military ordinary exercises jurisdiction primarily and principally, while the diocesan bishop exercises it secondarily—in the absence of the ordinary or his chaplains—but properly (*SMC* V). The ordinary belongs by law to the national bishops' conference (*SMC* III).

Spirituali militum curae prescribes for the military ordinariates an organizational structure similar to that of the diocese: the ordinary has a proper church and a proper curia (*SMC* XIII, 1), presbyteral council (*SMC* VI, 4), and the ability to constitute a proper tribunal (*SMC* XIV). In general terms, which must be specified in the statutes, the military ordinary has the authority to erect a proper seminary and incardinate priests and deacons (*SMC* VI, 3, 4). Nonetheless, the general practice in almost all the ordinariates is to establish agreements with the dioceses or religious institutes providing chaplains.

3. The Latin ordinariates for the care of the faithful of the Eastern rite are particular personal ecclesiastical structures erected by the Holy See, by decree of the Congregation for the Eastern Churches, in which the *cura animarum* of the faithful of Eastern rite who do not have a proper hierarchy in the country are entrusted to a Latin pastor as the proper ordinary. The entity represents a subsequent evolution of the apostolic exarchates—initiated, in their present form, with the creation of the Ruthenian ordinariate in Canada in 1912,[4] although it belongs by law to the Latin Church, because the ordinariate is configured from the Latin hierarchy. Moreover, it has the characteristic of being inter-ritual (it is directed to all the Eastern Catholic faithful without a proper hierarchy in the country), which in itself is outside of Eastern canon law (cf. c. 314 § 1 *CCEO*). The 1993 *Annuario pontificio* indicates the existence of six ordinariates of this type:[5] that of Romania, erected in 1930; Austria (1945), Brazil (1951); France (1954); Argentina (1959); and Poland (1981).

The decree of erection of the ordinariate determines in each case the nature of the power of the ordinary, and the terms of coordination and subordination with the local ordinary and with the hierarchy of the respective Eastern Churches. Thus, while in France the jurisdiction of the ordinary is cumulative with that of the local ordinaries, with the jurisdiction of the local ordinaries subsidiary to that of the ordinary—although its approval is needed for the validation of acts that may affect them[6]—in the

4. Cf. PIUS X, Litt. Ap. *Officium supremi Apostolatus*, July 15, 1912, in *AAS* 4 (1912), pp. 555–556.

5. Cf. *Annuario pontificio* 1993, p. 1031, and for historical observations, p. 1710.

6. Cf. SCEC, *Decl. interpretativa*, April 30, 1986, in *AAS* 78 (1986), pp. 784–786, nos. I and II.

Ordinariate of Argentina it is establishedthat "*potestas iurisdictionis Ordinarii in praedictos fideles ritus orientalis erit exclusiva.*"[7]

The office of the ordinary usually devolves upon the diocesan bishop of the capital of the country, who has a specific vicar general for the governance of the ordinariate. In the exercise of his function, the ordinary is vested with the authority which is characteristic of a diocesan bishop, with the duty to establish churches, erect Eastern parishes and appoint priests to care for them (the juridical methods for reuniting these clergy vary from one case to another), care of the formation of the seminarians, recognize associations of the faithful, etc.

7. Cf. SCEC, Decr., February 19, 1959, in *AAS* 54 (1962), p. 49.

373 **Unius supremae auctoritatis est Ecclesias particulares erigere; quae legitime erectae, ipso iure personalitate iuridica gaudent.**

It is within the competence of the supreme authority alone to establish particular Churches; once they are lawfully established, the law itself gives them juridical personality.

SOURCES: cc. 100 § 1, 215 § 1; Pius PP. XII, Enc. *Mystici Corporis*, 29 iun. 1943 (*AAS* 35 [1943] 211); CodCom Resp., 23 iun. 1953; *LG* 22; *CD* 2; *REU* 49 § 1

CROSS REFERENCES: cc. 121–123, 294–297, 364, 368–369, 381, 391, 393

COMMENTARY

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Because he is the head of the College and the center of communion, it devolves upon the Roman Pontiff to specify the distinct communities in the people of God, constituting them as relatively autonomous entities under the guidance of a legitimate pastor. Canon 373 acknowledges that the pope has the power to establish particular churches and, in general, any type of ecclesiastical division. This in turn includes the capacity to modify the elements constituting the existing divisions (the scope, the location of the see, etc.), as well as the capacity to elevate them to a higher juridical category.[1]

As we have seen in the commentary on the preceding canons, the erection of particular churches or other ecclesiastical divisions entails the configuration of a portion of the people of God around a legitimate pastor, constituting a community hierarchical structure that is given life by the sacraments and other factors of communion (*CD* 11). The object of canonical erection is the ecclesial entity considered by itself, structured in accordance with the *clerus-plebs* hierarchical relationship, and consisting of three proper subjective elements: head, people and presbyterate. The act of erection establishes the relative position of each of these three elements, which position differs incidentally according to the type of division (see commentary on c. 369).

The ecclesiastical divisions erected as such by the supreme authority of the Church enjoy *ipso iure* public juridical personality for achieving the

1. Cf. X. WERNZ, *Ius Decretalium*, II, 2 (Rome 1899), pp. 875ff.

proper institutional ends within canon law. The procedure for erection is substantially the same in all divisions (it is similar to the procedure for appointing bishops),[2] and, in general terms, it is also applied to the cases of substantial modification of ecclesiastical divisions. In that procedure, five basic phases can be specified: 1) information and proposal phase, 2) study phase, 3) deliberative phase, 4) decision phase, and 5) execution phase.

1. Information and proposal phase. This phase includes gathering the objective elements and the reports needed to substantiate the file. In general terms, *Christus Dominus* 24 granted the national bishops' conferences, through a specific episcopal commission that they themselves must establish, the duty to study and make proposals on the organization of the divisions of the respective country.[3] Moreover, it devolves upon the pontifical legate to promote, even on his own initiative, this type of study, to gather the necessary information and to propose to the respective dicastery whatever he believes must be done, adding his own opinion to that of the bishops' conference (c. 364; *SOE* VII).

2. Study phase. The study of the documentation coming from each country, and the incorporation of the data contained in them devolves upon the vicarious organs of the Holy See that are competent in this regard. Leaving aside the competence of the Congregation for the Eastern Churches to which the Latin ordinariates for the faithful of the Eastern rite are subordinated (see commentary on c. 372), as well as any territorial abbey and any apostolic vicariate, by reason of their geographical area, the Congregation for Bishops—in common governance territories (*PB* 78) or the Congregation for the Evangelization of Peoples—in mission territories (*PB* 89) are competent, respectively. With regard to concordat countries, the Second Section of the Secretariat of State (*PB* 47 § 1) is also competent. Therefore, in order to resolve specific problems, there is a permanent inter-dicasterial commission, made up of the heads of the appropriate offices of the Secretariat of State and of the Congregation for Bishops.[4]

The elements considered in assessing in each case the viability and the appropriateness of erecting an ecclesiastical division—and to the extent that it is applicable, also for the elevation of the see to a new category, for the merger, division, change of see, etc.[5]—come from an analysis of a long series of factors that, as a whole, indicate the ecclesial situation of the community in question. Thus, the following is taken into account: a) the geopolitical and social context: the historical and political situation,

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2. Cf. M. COSTALUNGA, "La congregazione per i vescovi," in *La Curia Romana nella Cost. Ap. "Pastor Bonus"* (Vatican City 1990), p. 289; J.I. ARRIETA, art. "Vescovi," in *Enciclopedia giuridica*, XXXII (Rome 1994).
3. Cf. *ES* I, 12 §1; *SOE* VII.
4. Cf. *L'Osservatore Romano*, March 23, 1989, p. 1 (not published in *AAS*).
5. Cf., for example, SCPF, Instr. *Antequam haec*, June 21, 1942, in *AAS* 34 (1942), pp. 347–349.

the geographical environment, the distribution of the population and the religious composition; b) the economic substratum: the possibility of self-sufficiency for the new entity, potential official and private assistance; c) the Christian development of the community: the catechetical level, ecclesial participation, Catholic schools, associations of the faithful, hospitals and other Catholic initiatives; d) the degree of hierarchical and structural development: the incardinated or missionary clergy, parochial development, seminary and vocations, etc.[6]

With specific regard to the division of dioceses, van Hove, in 1909, indicated five conditions for action, which in general terms are still somewhat valid: a) just cause, b) adequate place, c) sufficient economic condition, d) consent of the head of the diocese, and e) permission or agreement from the government, theoretically unnecessary, but in practice a determining factor in making the erection of a new ecclesiastical division viable.[7]

3. Deliberative phase. Once the study is completed by the competent dicastery, it passes to deliberation in the ordinary session of the Congregations of Bishops or of the Evangelization of Peoples, which expresses its opinion in the form of counsel—*de consilio congregationis*, that will be included in the final constitutive bull, which is submitted to the pope in an audience granted to the cardinal prefect. The decision of the pope is communicated in this audience to the prefect, the respective congregation issues a decree directed to the Secretariat of State, on the basis of which the Secretariat prepares the constitutive bull of erection of the new division.[8] The function of the Secretariat of State at that time is purely material, given that the decree of the competent congregation, containing the pontifical decision, sanctions the constitution of the division, which formally ends the procedure.

The mere modification of the boundaries of a division, the change of location or see, the change of the cathedral church, the erection of a co-cathedral, etc., is made through a decree of the respective congregation, based on the special authority granted by the Roman Pontiff. Therefore, the decree usually contains the clause: "*valituro ac si Apostolicae sub plumbo datae forent.*"

4. Decision phase. The decision of the Roman Pontiff is set forth in an apostolic constitution, in the form of a constitutive bull. The document, signed by the Secretary of State, the prefect of the dicastery and two protonotaries, contains the description of the elements making up the new

6. Cf. F.C. BOUUAERT, art. "Diocèse," in *Dictionnaire de droit canonique*, IV (Paris 1949), cols. 1261–1262; P. CIPROTTI, art. "Diocesi," in *Enciclopedia cattolica*, IV (Vatican City 1950), col. 1652.

7. Cf. A. VAN HOVE, art. "Diocese," in *The Catholic Encyclopedia*, V (New York 1909), pp. 2–3.

8. Cf. G. LO CASTRO, *Le prelature personali* (Milan 1988), pp. 71ff.

ecclesiastical division: demarcates the territory or the personal area; establishes the see of the pastor; determines its church and the relative title; indicates, if applicable, the metropolitan see; establishes the necessary criteria for coordination with other structures; orders the establishment of governing agencies; indicates, when applicable, criteria for the delimitation of the clergy, for their formation, etc.

5. Execution phase. The constitutive bull includes the mandate of execution of the pontifical erection. The mandate is usually executed by the pontifical legate of the country, conferring upon him the faculty to subdelegate another person vested with ecclesiastical dignity, imposing upon him the obligation to send notification that the acts were carried out to the competent congregation.

In the event of a division, merger, etc., of the ecclesiastical divisions that entail a modification of the juridical person of the preexisting structure, the rules established by canons 121–123 regarding the union, extinction, etc., of juridical persons in general must be observed in order that the rights and obligations of the former subject are fairly distributed among the new subjects.

374 **§ 1. Quaelibet dioecesis aliave Ecclesia particularis dividatur in distinctas partes seu paroecias.**

§ 2. Ad curam pastoralem per communem actionem fovendam plures paroeciae viciniores coniungi possunt in peculiares coetus, uti sunt vicariatus foranei.

§ 1. Each diocese or other particular Church is to be divided into distinct parts or parishes.

§ 2. To foster pastoral care by means of common action, several neighbouring parishes can be joined together in special groups, such as vicariates forane.

SOURCES: § 1: c. 216 §§ 1–3; SCPF Instr. *Cum a pluribus*, 25 iul. 1920 (*AAS* 12 [1920] 331–333); *CD* 32; *ES* I, 21; *DPMB* 174–177
§ 2: c. 217; *DPMB* 184–188

CROSS REFERENCES: cc. 102 § 3, 515–516, 518, 553ff

COMMENTARY

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1. This canon discusses what doctrine has termed minor ecclesiastical circumscription, mainly the parish and the vicariate forane or deanery, which constitute subdivisions of the major divisions, to which we have referred in the commentary on the preceding canons. Although their historical existence dates back in many places to the early centuries of Christianity, it is after the Council of Trent that the practice of dividing diocesan territory into distinct parishes with the assignment of a proper rector or parish priest to each spread in the Latin Church.[1] From this division arises the resulting distinction between a diocesan community and a parish community, and between diocesan and parish domicile (c. 102 § 3).

2. The parish[2] is considered here as a *pars dioecesis;* not as a *portio populi Dei*. In fact paragraph one of this canon is the determining factor for developing the parish as the organizational structure into which a diocese is subdivided, but which is not an autonomous entity of pastoral

1. Cf. F.X. WERNZ, *Ius Decretalium*, II, 2 (Rome 1899), pp. 1032ff.

2. Cf. T. MAURO, art. "Parocchia," in *Enciclopedia del diritto*, XXXI (Milan, 1981), pp. 868ff; A. VITALE, art. "Parocchie e parroci," in *Enciclopedia giuridica*, XXII (Rome 1990); R. PAGÉ, *Les églises particulières*, II (Montreal 1989); F. COCCOPALMERIO, *De paroecia* (Rome 1991).

government. It is a territorially or personally circumscribed institution (cf. c. 518), the community of which has been entrusted primarily to the pastoral care of the bishop of the diocese, and which this bishop entrusts to the care of the proper parish priest, who, under his direction and governance, directly supplies the *cura animarum*. The substratum erected as a parish is the organizational institution and as such, formed by the parish priest, the *coetus fidelium* and the material and juridic means as a whole, proper to that entity.[3] The division of the diocese into parishes is not, therefore, a phenomenon of decentralization, but rather of vicarious deconcentration of the pastoral duties of the bishop in favor of the parish priest, who exercises them in his own name, though under the guidance of the bishop who, in the strict sense, is the proper pastor of the parish community.

3. Starting in the fifth century, the aggregate of minor churches—parishes—around the *digniores* (churches with the right to have a baptismal font or baptismal church) was gradually consolidated, forming what we know today as vicariate foranes (deaneries, vicariates, etc.).[4] The functions of the vicar forane are set forth in canons 553ff. Basically, it is an office with the functions of pastoral coordination, information, and control, to which are added the tasks of personal assistance to the clergy of the vicariate forane. Any jurisdiction that the vicar forane may have comes from the bishop of the diocese, by delegation or through habitual faculties.[5]

In any event, the vicariate forane is not the only minor division of a grouping of parishes. Depending on the country and the pastoral needs, the various parishes or vicariate foranes are usually in turn grouped in pastoral areas, sectors, etc., entrusted to an episcopal vicar of the area, an auxiliary bishop, etc., in the manner established by the particular law of the diocese.

4. In the vicariates and prefectures apostolic, and in general in the mission divisions, instead of parishes, quasi-parishes (c. 516 § 1) have traditionally been erected—in turn grouped as quasi-deaneries—in which the community of the faithful was usually entrusted "*uti pastori proprio*" to a priest (quasi-parish priest) who, without being a parish priest, nonetheless has similar functions. In the Code, the quasi-parish is no longer the exclusive entity of mission territories, but rather can be used provided that there are objective reasons for it, such as, for example, the inability to establish a parish with the requisites and the stability established by canon 515. On the other hand, if the requirements of this canon are met, it

3. Cf. A. PILLET, *Ius canonicum generale* (Paris 1890), p. 80.
4. Cf. Cf. F.X. WERNZ, *Ius Decretalium*, pp. 1013–1014; R. NAZ, *Traité de droit canonique*, I (Paris 1946), pp. 502ff.
5. Cf. F.X. WERNZ, *Ius Decretalium*, p. 1014; F. DESHAYES, *Memento iuris ecclesiastici* (Paris 1902), pp. 230–231.

is now also possible to erect parishes in the strict meaning of the term in mission territories.

What this canon establishes with regard to the need to divide the territory of the diocese into parishes is not mandatory in mission territories. It has been traditionally understood that the vicariates and prefectures apostolic did not need to be completely divided into quasi-parishes (or, at present, also into parishes), but it sufficed to make this division where it was really possible to constitute stable communities of the faithful with a proper church and pastor, in the meantime leaving the rest of the territory undivided.

Moreover, in the event that it is not even possible to resort to the territory criterion in order to demarcate the quasi-parishes (or parishes), it was sufficient to indicate which groups of Christian faithful must be understood to be included therein and therefore in the charge of the respective parish priest.[6] This criterion, established first for vicariates and prefectures apostolic, is also extended to the mission diocese, in which traditionally "*permitti potest ut in eisdem aliqua pars territorii indivisa maneat, idest sine designatione limitum paroecialium.*"[7]

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6. Cf. *CIC*/1917 c. 216 §2; SCPF, Instr. *Cum a pluribus*, July 25, 1920, in *AAS* 12 (1920), pp. 331–333; A. SANTOS HERNÁNDEZ, *Derecho misional*, VII (Santander 1962), p. 259.

7. SCPF, Decr. *Ordinarii quarundam*, December 9, 1920, in *AAS* 13 (1921), p. 18.

CAPUT II
De Episcopis

ART. 1
De Episcopis in genere

CHAPTER II
Bishops

ART. 1
Bishops in General

375 **§ 1. Episcopi, qui ex divina institutione in Apostolorum locum succedunt per Spiritum Sanctum qui datus est eis, in Ecclesia Pastores constituuntur, ut sint et ipsi doctrinae magistri, sacri cultus sacerdotes et gubernationis ministri.**

§ 2. Episcopi ipsa consecratione episcopali recipiunt cum munere sanctificandi munera quoque docendi et regendi, quae tamen natura sua nonnisi in hierarchica communione cum Collegii capite et membris exercere possunt.

§ 1. By divine institution, Bishops succeed the Apostles through the Holy Spirit who is given to them. They are constituted Pastors in the Church, to be the teachers of doctrine, the priests of sacred worship and the ministers of governance.

§ 2. By their episcopal ordination, Bishops receive, together with the office of sanctifying, the offices also of teaching and of ruling, which however, by their nature, can be exercised only in hierarchical communion with the head of the College and its members.

SOURCES: § 1: c. 329 § 1; Pius PP. XII, Enc. *Mystici Corporis*, 29 iun. 1943 (*AAS* 35 [1943] 211–212); *LG* 19, 20; *CD* 2; *DPMB* 32–38
§ 2: *LG* 21, nep 2; *CD* 11; *DPMB* 39–43

CROSS REFERENCES: cc. 330, 336, 379–380

COMMENTARY

Dominique Le Tourneau

1. The Second Vatican Council indicates that the apostles "ensured the establishment of successors in this hierarchically organized society" that is the Church. The bishops have received "the ministry of the community ..., presiding in God's place over the flock, of which they are pastors, as teachers of doctrine, priests of sacred worship and ministers of governance." Moreover, "by divine institution they have succeeded the apostles as pastors of the Church" (*LG* 20). On the other hand, by episcopal ordination, they receive the fullness of the sacrament of orders, that, "together with the office of sanctifying, also confers the offices of teaching and of ruling, which, however, by their very nature, cannot be exercised but in hierarchical communion with the Head and the members of the College" (*LG* 21; cf. *CD* 2).

2. These conciliar teachings are contained in this canon, which, in its two paragraphs, sets forth four basic principles:

a) By divine institution, the bishops are successors of the apostles, which principle was already established in canon 330, introducing chapter I of book II, part II, section I: "The Roman Pontiff and the College of Bishops."

b) The bishops are constituted as "pastors" of the Church, which word is explicitly set forth in *Christus Dominus* 2, 11, 16 and *passim*, and, for this reason, it was added to the text of the canon,[1] which paragraph one specifies when it describes bishops as "teachers of doctrine, priests of sacred worship, ministers of the governance of the Church." They are teachers of doctrine especially when they moderate all the ministry of the word (c. 756 § 2); they are priests of sacred worship eminently by being moderators, promoters, and custodians of all the liturgical life of the Church (c. 835 § 1). Their office as ministers for the governance is stated throughout the Code.

c) Paragraph two specifies that they perform the threefold office of sanctifying, teaching, and governing (cf. *CD* 11). They receive this threefold office through the same episcopal ordination whether or not they are diocesan bishops (see commentary on c. 376), by which a fundamental equality among all bishops is established.

It is an ontological participation in the triple *munera*, as can be noted in tradition, as well as in liturgy. Here the word "office" or *munus* is used, and not "power" or *potestas*, because the latter could be understood as a power that is unobstructed in the exercise. However, for it to have un-

1. Comm. 18 (1986), p. 117.

obstructed power, there must be a canonical determination, or canonical mission, on the part of the hierarchical authority: the attribution of an office or of certain faithful that must be ministered to. With regard to "offices that must be exercised by multiple subjects that collaborate hierarchically by the will of Christ," the determination on the part of the hierarchical authority "is required by the nature of the thing" (*pen* 2).

Episcopal ordination is a true sacrament, that confers "the fullness of the sacrament of orders;" it is also called "supreme priesthood" or "height of the sacred ministry" (*LG* 21). It impresses a proper sacred character. Bishops do not act therefore as vicars of the Roman Pontiff, given that they exercise a proper power, acting as vicars and legates of Christ (*LG* 27).

d) They must exercise this office in hierarchical communion (cf. *Communionis notio* 13). As Vatican II stressed, "communion" should not be understood to mean an undefined feeling but as an organic reality that demands a juridical form and that, in turn, is animated by charity (*pen* 2). This communion has to take place with the Roman Pontiff, the head of the Episcopal College, and with the other members of this College, as the Code establishes, in harmony with the Council's teachings (cf. *LG* 22). One is a member of this Episcopal College "by virtue of sacramental consecration and of hierarchical communion" (c. 336). The bishop commits himself to this when he takes the oath of fidelity to the Apostolic See prior to taking possession of the office (see commentary on c. 380).

3. As we have noted above, the canonical mission, or hierarchical determination of the triple *munera* received in sacramental ordination, is given to the bishop by hierarchical authority, that is, in this case by the Roman Pontiff, the head of the College of Bishops.

376 Episcopi vocantur dioecesani, quibus scilicet alicuius dioecesis cura commissa est; ceteri titulares appellantur.

Bishops to whom the care of a given diocese is entrusted are called diocesan Bishops; the others are called titular Bishops.

SOURCES: *CD* passim

CROSS REFERENCES: c. 369

COMMENTARY

Dominique Le Tourneau

This canon sets forth as a principle that bishops are either diocesan or titular.

1. Diocesan bishops are those to whom the care of a diocese has been entrusted:[1]

a) The seven patriarchs established in the East are the head of a Church over the archbishops and bishops of their respective rite, that is, the patriarchs of Alexandria of the Copts, Antioch of the Syrians, Antioch of the Melchites, Antioch of the Maronites, Jerusalem of the Latins, Babylon of the Chaldeans, and Cilicia of the Armenians. To them are incorporated the major archbishop of Lviv of the Ukrainians of the Byzantine rite (cf. *OE* 10).

b) The patriarchs of Venice, Lisbon, and East Indies (Goa), whose title is merely honorific, to which is to be added the patriarchate of the West Indies, without a titular since the death of Archbishop Leopoldo Eijo-Garay in 1964.

c) The metropolitan archbishops who preside over an ecclesiastical province (c. 435).[2]

d) The non-metropolitan archbishops, without suffragan dioceses, which, therefore, are directly subordinate to the Holy See (Monaco, Luxembourg, Strasbourg, sees elevated to archepiscopal dignity by John Paul II as a result of accords with the civil authorities relating to episcopal appointments; Barcelona, Tangiers, Marseilles, etc.); and the bishops with

1. Cf. J.B. D'ONORIO, *Le pape et le gouvernement de l'Église* (Paris 1992), pp. 136–140.
2. Cf. D. LE TOURNEAU, art. "Province ecclésiastique," in *Dictionnaire historique de la papauté* (Paris 1994).

the personal title of archbishop, appointed as the head of a diocese: then they bear the title of "archbishop-bishop of..."

e) The suffragan bishops (c. 436) whose dioceses compose an ecclesiastical province presided over by a metropolitan.

f) The bishops "immediately subject to the Holy See," who are directly dependent on the Apostolic See by the fact that their diocese is exempt from an ecclesiastical province (Metz, Saint-Denis-de-la-Réunion, etc.), in spite of the general norm of canon 431 § 2 that provides that "hereafter there will be no exempt dioceses."

According to the law (cc. 381, 368),[3] prelates who, whether or not they are invested with episcopal dignity, govern a portion of the people of God, are considered equal to diocesan bishops:

a) territorial prelates and abbots (c. 370);[4]

b) vicars and prefects appostolic (c. 371 § 1), with the former always having the rank of bishop;

c) apostolic administrators (c. 371 § 2);

d) apostolic exarchs, bishops leading the faithful of various Eastern Churches residing in Latin Rite countries, over which they exercise their jurisdiction in the name of the Roman Pontiff; and the diocesan bishops of the Latin Rite to whom the Holy See entrusts communities of the faithful of Eastern Churches in existence in a Latin Rite territory, but without a proper bishop.

Diocesan bishops were previously called residential (c. 344 *CIC* 1917), in that they were obligated by law to personally reside in their diocese (c. 395 § 1), as dictated by the Council of Trent against the absenteeism of those bishops who limited themselves to receiving the "benefice" of their office. However, Vatican II calls them diocesan (*CD* 11), and not without reason, given that all coadjutor and auxiliary bishops are also residential, but not diocesan.

2. All bishops that are not diocesan are called titular. In its original wording, this canon stated what titular bishops meant "those to whom the care of a diocese is not entrusted, but who hold the office of coadjutor or auxiliary in a diocese, or other offices for the benefit of a number of particular churches or even of the universal church."[5] Then, it was specified, in view of the evolution of the concept of diocesan bishop, that a titular bishop is also the one "who exercises an office for the benefit of a portion of the people of God."[6] Titular bishops are:

3. Cf. D. LE TOURNEAU, art. "Église universelle et Églises particulières," ibid.
4. Cf. D. LE TOURNEAU, art. "Prélatures," ibid.
5. *Comm.* 16 (1984), p. 118.
6. Ibid., p. 131.

a) The coadjutor bishop (c. 403 § 3), called "coadjutor bishop of ...," and the auxiliary bishop (c. 403 §§ 1 and 2).

b) The diocesan bishop whose resignation from office (due to having reached age 75, illness or another serious cause) has been accepted by the Roman Pontiff (c. 401), even though he continues to reside in the diocese (c. 402 § 1). He is called the "retired bishop of ..." or "bishop emeritus of ..." (c. 185).

c) Prelates, (cc. 368, 370), if they have received episcopal ordination. They are called the "bishop-prelate of ..."[7]

d) Although they are somewhat similar *in iure* to diocesan bishops, military ordinaries[8] are also titular, as well as the prelates of a personal prelature.

e) Nuncios and pronuncios who have the rank of archbishop, some permanent observers from the Holy See at international organizations, the apostolic delegates whose mission is strictly religious, those holding important offices in the Roman Curia.[9]

3. During the revision of the 1917 Code, the *coetus* "De clericis"[10] considered whether to eliminate or retain the office of titular bishop. They decided to retain it, for historical reasons, and especially since Vatican II had already resolved the matter when it determined that titular bishops holding an office entrusted to them by the Holy See or by a bishops' conference are members of the conference, and the remaining titular bishops are not *de iure* members (cf. *CD* 38).

The term "titular" is owing to the fact that these prelates are entrusted with the *titulum*—merely formal—of an extinct diocese or diocese conquered by the infidels and therefore called *in partibus infidelium*.[11] Most of these dioceses belonged to the Byzantine Empire, especially in Syria, Palestine, some Mediterranean islands and North Africa. Due to protests from the Orthodox who were offended by the term "infidel" attributed to these ancient dioceses of their territory, the Sacred Congregation for the Propagation of the Faith eliminated the term *in partibus infidelium* by decree on February 27, 1882.

7. *Comm.* 9 (1977), p. 224.

8. Cf. D. LE TOURNEAU, "La nouvelle organisation du vicariat aux armées," in *Studia canonica* 21 (1987), pp. 37–66; idem, art. "Ordinariat aux armies," in *Dictionnaire historique de la papauté*, cit.; *Comm.* 18 (1986), p. 118, which refers to *CD* 43.

9. Cf. J.B. D'ONORIO, ed., *Le Saint-Siège dans les relations internationales* (Paris 1988), pp. 38–55.

10. *Comm.* 16 (1984), pp. 118–119.

11. Cf. D. LE TOURNEAU, art. "Diocèse in partibus," in *Dictionnaire historique de la papauté*, cit.

Now the title of an extinct diocese is not given to all the bishops that *de iure* are titular: it is not received by a retired bishop,[12] a coadjutor bishop,[13] nor a territorial prelate.[14] Thus, the classifications now used are as we have mentioned above.

Prelates elevated to the dignity of cardinal who are not diocesan bishops, such as those who preside over the dicasteries of the Roman Curia, lose their title.

12. Letter of the SCB to the presidents of bishops' conferences, November 7, 1971, in *Leges Ecclesiae* 5 (1973–1978) no. 4136, col. 6382.

13. Letter of the SCB, August 31, 1976, in *Leges Ecclesiae* 5 (1973–1978) no. 4465, col. 7238–7239; *Comm.* 9 (1977), p. 223.

14. Letter of the SCEC, October 17, 1977, in *Leges Ecclesiae* 5(1973–1978), no. 4530, col. 7358–7359; *Comm.* 9 (1977), p. 224.

377 **§ 1. Episcopos libere Summus Pontifex nominat, aut legitime electos confirmat.**

§ 2. Singulis saltem trienniis Episcopi provinciae ecclesiasticae vel, ubi adiuncta id suadeant, Episcoporum conferentiae, communi consilio et secreto elenchum componant presbyterorum etiam sodalium institutorum vitae consecratae, ad episcopatum aptiorum, eumque Apostolicae Sedi transmittant, firmo manente iure uniuscuiusque Episcopi Apostolicae Sedi nomina presbyterorum, quos episcopali munere dignos et idoneos putet, seorsim patefaciendi.

§ 3. Nisi aliter legitime statutum fuerit, quoties nominandus est Episcopus dioecesanus aut Episcopus coadiutor, ad ternos, qui dicuntur, Apostolicae Sedi proponendos, pontificii Legati est singillatim requirere et cum ipsa Apostolica Sede communicare, una cum suo voto, quid suggerant Metropolita et Suffraganei provinciae, ad quam providenda dioecesis pertinet vel quacum in coetum convenit, necnon conferentiae Episcoporum praeses; pontificius Legatus, insuper, quosdam e collegio consultorum et capitulo cathedrali audiat et, si id expedire iudicaverit, sententiam quoque aliorum ex utroque clero necnon laicorum sapientia praestantium singillatim et secreto exquirat.

§ 4. Nisi aliter legitime provisum fuerit, Episcopus dioecesanus, qui auxiliarem suae dioecesi dandum aestimet, elenchum trium saltem presbyterorum ad hoc officium aptiorum Apostolicae Sedi proponat.

§ 5. Nulla in posterum iura et privilegia electionis, nominationis praesentationis vel designationis Episcoporum civilibus auctoritatibus conceduntur.

§ 1. The Supreme Pontiff freely appoints Bishops or confirms those lawfully elected.

§ 2. At least every three years, the Bishops of an ecclesiastical province or, if circumstances suggest it, of a Bishop's Conference, are to draw up, by common accord and in secret, a list of priests, even of members of institutes of consecrated life, who are suitable for the episcopate; they are to send this list to the Apostolic See. This is without prejudice to the right of every Bishop individually to make known to the Apostolic See the names of priests whom he thinks are worthy and suitable for the episcopal office.

§ 3. Unless it has been lawfully prescribed otherwise, for the appointment of a diocesan Bishop or a coadjutor Bishop, a *ternus*, as it is called, is to be proposed to the Apostolic See. In the preparation of this list, it is the responsibility of the papal Legate to seek individually the suggestions of the Metropolitan and of the Suffragans of the province to which the diocese in question belongs or with which it is joined in some grouping, as well as the suggestions of the president of the Bishops' Conference. The papal Legate is, moreover, to hear the views of some members of the college of consultors and of the cathedral chapter. If he judges it expedient, he is also to seek individually, and in secret, the opinions of other clerics, both secular and religious, and of laypersons of outstanding wisdom. He is then to send these suggestions, together with his own opinion, to the Apostolic See.

§ 4. Unless it has been lawfully provided otherwise, the diocesan Bishop who judges that his diocese requires an auxiliary Bishop, is to propose to the Apostolic See a list of the names of at least three priests suitable for this office.

§ 5. For the future, no rights or privileges of election, appointment, presentation or designation of Bishops are conceded to civil authorities.

SOURCES: § 1: cc. 329 §§ 2 and 3, 332 § 1; *CD* 20; *ES* I, 10
§ 2: SCCong Decr. *Inter suprema*, 19 mar. 1919 (*AAS* 11 [1919] 124–128); SCCong Decr. *Maximam semper*, 20 nov. 1921 (*AAS* 13 [1921] 13–16); SCCong Decr. *Quae de eligendis*, 19 mar. 1921 (*AAS* 13 [1921] 222–225); SCCong Decr. *Quo expeditiori*, 30 apr. 1921 (*AAS* 13 [1921] 379–382); SCCong Decr. *Ad proponendos*, 20 aug. 1921 (*AAS* 13 [1921] 430–432); *ES* I, 10; *NPCEM* II–X
§ 3: SCCong Resp. 25 apr. 1917 (*AAS* 9 [1917] 232–233); SCCong Decr. *Regulas apprime*, 29 feb. 1924 (*AAS* 16 [1924] 160–161); *NPCEM* XIII–XV; Secr. St. Instr. *Secreta continere*, 4 feb. 1974, I, 7 (*AAS* 66 [1974] 91)
§ 4: *CD* 26; *NPCEM* XIII, 3
§ 5: *CD* 20; *NPCEM* XV

CROSS REFERENCES: cc. 364, 378

COMMENTARY

Dominique Le Tourneau

1. Paragraph one establishes the basic principle of the free appointment of bishops by the Roman Pontiff.[1] This principle was promulgated for the first time as ecclesiastical law in the 1917 Code as canon 329 § 2. Paragraph one of the current canon also establishes the need for confirmation by the Roman Pontiff of those who have been legitimately elected. This second election-confirmation situation is now in force in the seventeen dioceses in which the cathedral chapter participates in the election of bishops: thirteen in Germany (Aachen, Cologne, Essen, Freiburg, Fulda, Hildesheim, Limburg, Mainz, Munster, Osnabruck, Paderborn, Rottenburg, Trier), Salzburg in Austria, and Basel, Chur and St. Gall in Switzerland.[2]

As is known, the history of episcopal appointments is a weighty and, at times, a dramatic chapter in Church-State relations.[3]

2. The Decree *Episcoporum delectum* of the Council for the Public Affairs of the Church, March 25, 1972, signed by the then Prefect, Cardinal Villot, gave new norms for the appointment of bishops. Paragraphs 2–4 of canon 377 have been taken from them, which norms must therefore be integrated with the other provisions of the Decree, inasmuch as they have not been modified by the Code. This decree was accompanied by new *Norms* on the appointment of bishops in the Latin Church,[4] which were an application of *Ecclesiae sanctae* I, 10, and *Sollicitudo omnium ecclesiarum* VI § 1. The latter includes the following text: "For the appointment of bishops and of other ordinaries on the same level, it is the duty of the pontifical legate to instruct, as is customary, on the process of information on the candidates, and to propose a list with the name of each of the suitable candidates to the competent dicasteries of the Roman Curia, together with a detailed report, expressing, as he judges before God, his own opinion and vote, that is, which of the candidates he finds most suitable."[5]

1. Cf. D. LE TOURNEAU, art. "Cas et causes réservés au Pontife romain et au Saint-Siège," in *Dictionnaire historique de la papauté* (Paris 1994).

2. Cf. J.B. D'ONORIO, *La nomination des évêques: procédures canoniques et conventions diplomatiques* (Paris 1986), pp. 47–49; D. GEMMITI, *Il processo per la nomina dei vescovi* (Naples-Rome 1989).

3. Cf. D'ONORIO, *La nomination...*, pp. 45–88; J.L. HAROUEL, *Les désignations épiscopales dans le droit contemporain* (Paris 1977).

4. *AAS* 64 (1972), pp. 386–391.

5. Cf. D. LE TOURNEAU, "Les légats pontificaux dans le Code de 1983, vingt ans après la constitution apostolique 'Sollicitudo omnium Ecclesiarum'," in *L'Année canonique* 32 (1989), pp. 250–252.

It devolves upon the bishops of an ecclesiastical province[6] or, if applicable, the bishops of a bishops' conference,[7] to prepare a list at least every three years (c. 377 § 2), to be kept secret, of priests that are particularly suitable to be promoted to the episcopate, that is, who satisfy the requirements enumerated in law (c. 378). Before each provincial assembly, each bishop sends the president of that assembly and the other participating bishops his suggestions, in order that each can contribute possible additional information on the candidates.[8] At the meeting, the participants exchange information, and as a result they enter new names on the list, keeping or removing those already included in the list.

When there are more than one ecclesiastical provinces in the same country, the national bishops' conference can decide, with a two-thirds majority vote,[9] to send this list to the president of the same national bishops' conference, to inform him of their observations, either personally or through the council of the president of the conference or another commission over which he presides (cf. *ES* I, 10). It is sufficient that this consultation be done regarding the names of possible candidates, but it should not discuss the needs of the diocese or the qualities of the persons *in genere*.[10]

Members of institutes of consecrated life and also priests of other jurisdiction[11] may be included on this list, which must be sent to the Apostolic See through the pontifical legate.

In any event, each bishop reserves the right to send directly to the Apostolic See the names of possible candidates that he deems suitable for the office of bishop.[12]

3. When a diocesan or a coadjutor bishop is to be appointed, the Apostolic See is presented with a *terna* (c. 377 § 3), unless otherwise legitimately provided (as is the aforementioned case of the election by a cathedral chapter). Among the principal duties of the pontifical legates is carrying out the relevant investigation (or information process) in order to separately obtain the opinion of the metropolitan and of the other diocesan bishops of the ecclesiastical province to which the vacant diocese belongs, and that of the president of the bishops' conference.[13] Moreover, the pontifical legate must ask for an opinion from some members of the college of consultors (c. 502) and of the cathedral chapter (cc. 503ff). He

6. Cf. D. LE TOURNEAU, art. "Province ecclésiastique," in *Dictionnaire historique de la papauté*, cit.
7. CPAC, *Norms* attached to the Decr. *Episcoporum delectum*, March 25, 1972, in *AAS* 64 (1972), pp. 386–391, no. III, 1.
8. Ibid., no. V.
9. Ibid., no. X.
10. *Comm.* 18 (1986), p. 123.
11. Cf. *Norms* I, 1; cc. 705–707.
12. Ibid., II, 1.
13. Ibid., XIII, 1.

may also consult in secret and always separately with "one or two clerics" and also laypersons[14] of outstanding wisdom. Here the drafting commission rejected any type of right of the people of God to elect their pastors.[15]

Once this investigation has been carried out, the pontifical legate sends his own opinion to the Apostolic See, together with those of the metropolitan and his suffragans, that of the president of the bishops' conference and that of the others consulted.[16]

Paragraph three only refers to the secrecy that must be maintained with such serious material, with reference to consultations with the clergy and the laity. However, the *Norms* of February 25, 1972 establish that votes at meetings of the ecclesiastical province as well as of the bishops' conference must be held in secret (no. VII), and that all those participating in one way or another in the preparation of the candidate lists for the episcopate or in the information process must maintain pontifical secrecy[17] in order to avoid any type of "electoral campaign," pressures, and in order to safeguard the confidentiality of the information gathered.

4. When an auxiliary bishop is being appointed, the procedure is simpler: if not legitimately provided otherwise, the diocesan bishop takes the initiative,[18] given that the auxiliary bishop must be someone who has his confidence. The diocesan bishop himself will propose a list consisting of at least three names of presbyters whom he deems most suitable for the office of bishop. This does not diminish the discretion of the Roman Pontiff as to whether to grant the requested petition for the appointment of an auxiliary bishop and, if applicable, to choose a priest that is not on the list submitted by the diocesan bishop.[19] For this purpose, as well as for the preceding case, he in fact has the list prepared according to paragraph two of this canon.

5. The fifth and last paragraph codifies an express wish of the Council Fathers which had been specified in the following terms: "The right to appoint and institute bishops is proper, peculiar, and in itself exclusive to the competent ecclesiastical authority." At the same time, they requested that civil authorities "waive the aforesaid rights and privileges which they at present enjoy by agreement or custom."[20]

In practice, in many concordats and agreements reached between the Holy See and various civil authorities there are provisions regarding

14. Cf. ibid., XII, 2; c. 212 §3.
15. Cf. *Comm.* 18 (1986), pp. 119–123.
16. Cf. *Norms* XIII, 2.
17. Cf. *Norms* XIV; PAUL VI (*Rescriptum ex audientia*) Instr. *Secreta continere* regarding the secrecy of appointments made by the Pontiff, February 4, 1974, in *AAS* 66 (1974), pp. 89–92; D. LE TOURNEAU, art. "Secret pontifical," in *Dictionnaire historique de la papauté*, cit.
18. Cf. *CD* 26; *Norm* XIII, 3; c. 403 §1.
19. *Norms* XI, 2.
20. *CD* 20; cf. *Norms* XV.

the appointment of bishops which can fit into two major groups:[21] the right to consultation (also called the right to official communication) and the right to presentation. The first consists of prior notice, given by the Apostolic See to the respective government, of the appointment contemplated, in the event that said government should make concrete general political objections. "Objections of a political nature is understood to mean all the objections that the government may make for reasons related to State security, for example because the candidate has been guilty of dominance over territory or separatist political activity or activity against the constitution or against the public order of the country."[22] The right to consultation exists in eighteen states: Germany, Argentina, Austria, Bade, Bavaria, Bolivia, Ecuador, Spain,[23] France, Haiti, Italy,[24] Monaco, Peru, Poland, Prussia, Dominican Republic, Tunisia, and Venezuela (here we are omitting other accords related to the military ordinariates).

The right of presentation is a remnant of the ancient right of patronage, a privilege granted by the Church to the civil authority to submit to the Roman Pontiff candidates for the episcopal sees of their country. This right to submission only remains in force in Spain for the military ordinary,[25] in France for the dioceses of Alsace and Lorraine[26] in which the Napoleonic concordat is in force, and in Portugal for Macao.[27]

To this we must add the pragmatism with which the Holy See acted with respect to the Marxist inspired regimes: there are no specific agreements for the appointment of bishops, but the issue was always borne in mind.[28]

6. The text of paragraphs two and three of this canon underwent important changes during the drafting process that have not yet been made known in *Communicationes*.[29] We will only emphasize that in the December 16–21, 1968 session of the *coetus* "De sacra hierarchia" (the last of those known today)[30] there was still no mention in paragraph three of the predominate role of the pontifical legate. It was provided that the diocesan bishops of the ecclesiastical provinces must prepare the list and send it to the permanent council of the region, who would send it with their own opinion to the Apostolic See.

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21. Cf. D'ONORIO, *La nomination...*, pp. 45–64.
22. *Modus vivendi* of 1928 with Czechoslovakia, in *AAS* 20 (1928), p. 66.
23. Accord of July 28, 1976, art. 1, 2°, in *AAS* 68 (1976), pp. 510–511.
24. Accord of February 18, 1984, art. 3, 2°, which also requires the condition of being an Italian citizen except for the dioceses of Rome and its suburbs, in *AAS* 77 (1985), p. 523.
25. Accord of July 28, 1976, art. 1, 3°, in *AAS* 68 (1976), p. 511.
26. Cf. D'ONORIO, *La nomination*, pp. 60–64.
27. Cf. R. Metz, "Innovation et anachronismes au sujet de la nomination des évêques dans de récentes conventions passées entre le Saint-Siège et divers États (1973–1984)," in *Studia canonica* 21 (1986), pp. 197–219.
28. Cf. D'ONORIO, *La nomination*, pp. 65–88.
29. Cf., e.g., *Comm.* 18 (1986), pp. 119, 131, 158; 19 (1987), p. 132.
30. *Comm.* 19 (1987), p. 132.

378 **§ 1. Ad idoneitatem candidatorum episcopatus requiritur ut quis sit:**
1° firma fide, bonis moribus, pietate, animarum zelo, sapientia, prudentia et virtutibus humanis excellens, ceterisque dotibus praeditus quae ipsum aptum efficiant ad officium de quo agitur explendum;
2° bona exsistimatione gaudens;
3° annos natus saltem triginta quinque;
4° a quinquennio saltem in presbyteratus ordine constitutus;
5° laurea doctoris vel saltem licentia in sacra Scriptura, theologia aut iure canonico potitus in instituto studiorum superiorum a Sede Apostolica probato, vel saltem in iisdem disciplinis vere peritus.

§ 2. Iudicium definitivum de promovendi idoneitate ad Apostolicam Sedem pertinet.

§ 1. To be a suitable candidate for the episcopate, a person must:
1° be outstanding in strong faith, good morals, piety, zeal for souls, wisdom, prudence and human virtues, and possess those other gifts which equip him to fulfil the office in question;
2° be held in good esteem;
3° be at least 35 years of age;
4° be a priest ordained for at least five years;
5° hold a doctorate or at least a licentiate in sacred Scripture, theology or canon law, from an institute of higher studies approved by the Apostolic See, or at least be well versed in these disciplines.

§ 2. The definitive judgment on the suitability of the person to be promoted rests with the Apostolic See.

SOURCES: § 1: c. 331 §§ 1 and 2; *LG* 21, 23, 25; *NPCEM* VI, 2; *DPMB* 21–31
§ 2: c. 331 § 3; *NPCEM* XI, 2

CROSS REFERENCES: c. 377

COMMENTARY

Dominique Le Tourneau

1. Candidates for the episcopate must personally possess certain qualities. They are outward manifestations of these qualities, since the internal aspect of them cannot be investigated. The *Directory on the Pastoral Ministry of Bishops* (*Ecclesiae imago*) enumerated as the virtues with which the bishops must imbue their lives, pastoral charity, faith, the spirit of prayer, piety, hope, the spirit of creativity and of initiative, optimism, obedience, perfect continence, poverty, pastoral prudence, meekness and strength, the exercise of mercy and authority of governance (*DPMB* 21–30). Paragraph one indicates these qualities briefly, with one or two changes regarding the respective enumeration of canon 331 § 1 of the 1917 Code, with more requirements:

a) The first group of qualities (which were included in the fourth point of the previous legislation) includes strong faith, good morals, piety, zeal for the souls, wisdom, prudence and human virtues (strong faith, wisdom, and human virtue are peculiar to the 1983 Code), and the other qualities that manifest the candidate's aptitude to hold the office.

With regard to human virtues, the Directory states that "in addition to supernatural virtues, those human qualities should also stand out in the bishops, which are rightly and highly valued in human relations, and which help the pastoral prudence that arises from charity, and allows effective, assiduous, and wise care of the souls and proper governance of the clergy and of the people" (*DPMB* 31).

b) Held in good esteem, which brings to mind the norm given by Saint Paul in 1 Timothy 3:7.

c) At least thirty-five years of age, instead of the thirty years previously required (some consultors proposed thirty, others forty).[1]

d) Having been an ordained priest for at least five years (and not ten years as some would have preferred).[2]

e) Having obtained a doctorate, or at least a licentiate in sacred scripture (which discipline was not mentioned in the 1917 Code), sacred theology, or canon law, from an institute of higher learning approved by the Apostolic See (cf. cc. 807ff);[3] if not possible, the candidate must at least be a true expert in these disciplines (the 1917 Code demanded "evidence of true learning").

1. *Comm.* 18 (1986), pp. 123–124.
2. Ibid.
3. Ibid.

Curiously, this academic degree requirement is less rigorous for the appointment of bishops than for the position of professor in the disciplines of philosophy, theology and law in seminaries (c. 253 § 1), judicial vicar and adjutant judicial vicar (c. 1420 § 4), ecclesiastical judge (c. 1421 § 3), promoter of justice, and defender of the bond (c. 1435).

The Code does not include the condition of canon 331 § 1, 1° of the 1917 Code of having been born of a legitimate marriage, where subsequent legitimization was not sufficient.

The norms of Paul VI on the appointment of bishops in the Latin Church are more detailed and read as follows: "Investigation of the candidates must allow a determination of whether they possess the necessary qualities that characterize a good pastor of souls and a teacher of the faith: that is, whether they are held in good esteem; whether they have irreproachable conduct; whether they have honest discernment, prudence, a balanced, stable character; whether they are strong in the orthodox faith; whether they are devoted to the Apostolic See and loyal to the magisterium of the church; whether they have in-depth knowledge of dogmatic and moral theology and of canon law; whether they stand out because of their piety, spirit of sacrifice, and pastoral zeal; whether they have aptitude for governing. Intellectual qualities, level of education completed, social sensitivity, a willingness for dialogue and collaboration, openness to signs of the times, praiseworthy concern for remaining above factions, the family environment, health, age, and hereditary characteristics should also be borne in mind (no. VI)."[4]

2. Paragraph two of the canon sets forth the principle according to which, ultimately and logically, the final decision regarding the suitability of the candidates devolves upon the Apostolic See.[5] With regard to the respective canon of the 1917 Code, (c. 331 § 3), this norm speaks of a definitive decision, given that those participating in the selection have to formulate an opinion on their suitability.[6] In the 1917 Code, that decision belonged *unice* to the Apostolic See. The omission of this clarification implies that other ecclesiastical authorities could issue a definitive opinion on the suitability of the candidate for the episcopate.

The expression "Apostolic See"[7] in this context usually refers to the Congregation of Bishops, competent to appoint bishops in the Latin Church, except for churches in mission territories, in which case the Congregation for the Evangelization of Peoples is competent (*PB* 75, 89). When the appointment entails negotiation with the civil authorities, competence is handed over to the Second Section of the Secretariat of State.

4. Ibid.
5. Ibid., no. XI, 2.
6. *Comm.* 18 (1986), p. 125.
7. Cf. D. LE TOURNEAU, art. "Saint-Siège ou Siège apostolique," in *Dictionnaire historique de la papauté*, cit.

379 **Nisi legitimo detineatur impedimento, quicumque ad Episcopatum promotus debet intra tres menses ab acceptis apostolicis litteris consecrationem episcopalem recipere, et quidem antequam officii sui possessionem capiat.**

Unless prevented by a lawful reason, one who is promoted to the episcopate must receive episcopal ordination within three months of receiving the apostolic letter, and in fact before he takes possession of his office.

SOURCES: c. 333

CROSS REFERENCES: cc. 375, 382 § 3, 1013–1014, 1382

COMMENTARY

Dominique Le Tourneau

This canon contains two norms:

a) On the one hand, any priest who has been promoted to the episcopate is obligated to receive episcopal ordination within a time limit of three useful months, counted from the day he receives the apostolic letter; unless he is impeded by a legitimate reason.

b) Ordination must precede his taking canonical possession of his office, as was specified in the development of the text.[1] It is provided (c. 382 § 3) that this taking of possession must take place within a time limit of four months of the promotion to the episcopate, or two months if it is someone who is already an ordained bishop (c. 418 § 1).

This norm, which has no precedent in the 1917 Code, is in accordance with the fact that bishops participate ontologically in the triple *munera* of sanctifying, teaching and governing through episcopal ordination (see c. 375 § 2 and commentary); and with the provisions of canon 332 § 1, when it establishes that any one who, having been elected to the See of Peter who is not yet a bishop must be ordained as a bishop immediately, since he does not as yet possess the episcopal character and because he cannot receive full and supreme power in the Church if, upon his acceptance of his legitimate election, episcopal ordination is not included.

In order to proceed to episcopal ordination, a papal mandate (see commentary on c. 1013) and the participation of at least three ordaining

1. Cf. *Comm.* 19 (1987), p. 109.

bishops (see commentary on c. 1014) is required. In the absence of a pontifical mandate, the ordained as well as the ordaining bishops would incur excommunication *latae sententiae* reserved to the Apostolic See (see commentary on c. 1382).

Advanced age, illness,[2] having to perform a duty entrusted by a higher authority, etc., may constitute legitimate impediments for delaying the time of episcopal ordination.

2. CPAC, *Norms* attached to the Decr. *Episcoporum delectum*, March 25, 1972, in *AAS* 64 (1972), pp. 386–394, no. IV, 2.

380 **Antequam canonicam possessionem sui officii capiat, promotus fidei professionem emittat atque iusiurandum fidelitatis erga Apostolicam Sedem praestet secundum formulam ab eadem Apostolica Sede probatam.**

Before taking canonical possession of his office, he who has been promoted is to make the profession of faith and take the oath of fidelity to the Apostolic See, in accordance with the formula approved by the same Apostolic See.

SOURCES: c. 332 § 2; FORMULA IURAMENTI FIDELITATIS, 1972

CROSS REFERENCES: cc. 275, 375, 833

COMMENTARY

Dominique Le Tourneau

This canon evidences the realization of an aspect of hierarchical communion required by canon 275 § 2.

All those who are promoted to the episcopate or who are on the level of a diocesan bishop must personally (c. 833, 3°) make the profession of faith[1] (cf. cc. 381, 368; see also commentary on c. 376). They must do so prior to taking canonical possession of their office, before the delegate of the Apostolic See, who in practice would be the apostolic nuncio of the country in question or another apostolic legate.

Moreover, before taking possession of their office, they shall take the oath of fidelity to the Apostolic See, with the formula approved by it. The formula approved in 1972[2] is the following:

"*Ego ... nominatus ... Episcopus ... Sanctae Apostolicae Romanae Ecclesiae et Summo Pontifici, beati Petri Apostoli in Primatu Successori et Christi Vicario, eiusque legitimis Successoribus, semper fidelis ero atque oboediens. Quos non tantum summo prosequar honore, sed faciam etiam, quantum in me erit, ut debitus iisdem tribuatur honor et omnis iniuria ab ipsis arceatur.*

"*Iura et auctoritatem Romanorum Pontificum, mihi curae erit promovere et defendere; itidem praerogativas eorum Legatorum vel*

1. Cf. D. LE TOURNEAU, art. "Profession de foi et serment de fidélité, " in *Dictionnaire historique de la papauté* (Paris 1994).
2. *Leges Ecclesiae* 5 (1973–1978), no. 4161, col. 6440.

Procuratorum. Quidquid autem contra eadem a quopiam contigerit attentari, ipsi Summo Pontifici sincero animo aperiam.

"Apostolica munera mihi commissa docendi, sanctificandi et regendi, in hierarchica communione cum Christi Vicario et Collegii Episcopalis membris, omni cura ad mentem et litteram sacrorum canonum absolvere satagam.

"In depositum fidei purum et integrum servandum atque authentica ratione tradendum studium incumbam, errantibus vero in fide paternum animum pandam iidemque ut ad plenitudinem catholicae veritatis redeant omni ope annitar.

"Ad Concilium aliasque actiones collegiales episcopales vocatus, nisi impediar, me promitto ese venturum vel responsurum.

"Bona vero temporalia ad Ecclesiam mihi concreditam pertinentia iuxta sacrorum canonum diligenter administrabo, sedulo invigilans ne eadem quoque modo pereant aut detrimentum capiant.

"Concilii Vaticani II aliaque canonica Decreta quae institutionem ac ambitum actionis Conferentiarum Episcopalium respiciunt, necnon Consiliorum Presbyteralium et Pastoralium, amplectar eorumque munerum ordinatum usum libenter promovebo.

"Statutis denique temporibus Apostolorum limina vel ego ipse vel per alium ad normam iuris invisam, rationem de pastorali meo officio reddam ac de clero et populo mihi commissis fideliter referam: mandata simul obsequenter accipiam maximoque studio perficiam.

"Sic me Deus adiuvet et haec sancta Dei Evangelia."

It should be noted that a pontifical rescript of September, 9 1989[3] exempts bishops from using the new oath of fidelity formula in force as of March 1, 1989 for those faithful referred to in c. 833,5°–8°.

3. Cf. *AAS* 81 (1989), p. 1169.

ART. 2
De Episcopis dioecesanis

ART. 2
Diocesan Bishops

381 **§ 1 Episcopo dioecesano in diocesi ipsi commissa omnis competit potestas ordinaria, propria et immediate, quae ad exercitium eius muneris pastoralis requiritur, exceptis causis quae iure aut Summi Pontificis decreto supremae aut alii auctoritati ecclesiasticae reserventur.**

§ 2 Qui praesunt aliis communitatibus fidelium, de quibus in can. 368, Episcopo dioecesano in iure aequiparantur, nisi ex rei natura aut iuris praescripto aliud appareat.

§ 1. In the diocese entrusted to his care, the diocesan Bishop has all the ordinary, proper and immediate power required for the exercise of his pastoral office, except in those matters which the law or a decree of the Supreme Pontiff reserves to the supreme or to some other ecclesiastical authority.

§ 2. Those who are at the head of the other communities of the faithful mentioned in can. 368, are equivalent in law to the diocesan Bishop, unless the contrary is clear from the nature of things or from a provision of the law.

SOURCES: § 1: c. 334 § 1; Pius PP. XII, Enc. *Mystici Corporis*, 29 Jun. 1943 (*AAS* 35 [1943] 211–212); *LG* 27; *CD* 8, 11; *EM* Introductio; SCB-SCC Let., 12 iul. 1972; *DPMB* 42
§ 2: c. 215 § 2; *EM* III

CROSS REFERENCES: cc. 131, 145, 204, 330–333, 336, 368–369, 376–377, 1405, 1406, 1417

COMMENTARY

Alberto de la Hera

1. The drafting of canon 381 (the first canon of article 2, "Diocesan Bishops," of chapter II, "Bishops," of title I, "particular churches and the Authority Constituted within Them") arises from some key concepts that have been established in various preceding canons. Thus, in the first place, the concept of the people of God, consisting of the Christian faithful incorporated into Christ through baptism, who, sharing in the priestly, prophetic, and royal office of Christ, each according to his or her situation, fulfill the mission that God entrusted to the Church in the world; the Church governed by the successor of Peter and by the bishops in communion with him (c. 204).[1]

In canon 204, the radical equality of all the baptized is evidenced, as specified in canon 208: "Flowing from their rebirth in Christ, there is a genuine equality of dignity and action among all the faithful ..." At the same time, it also evidences the differences in function that each class of the faithful is to fulfill, among which we have seen that canon 204 expressly indicates the function of the Supreme Pontiff, the successor of Peter, and that of the bishops.[2]

These functions, the primatial and the episcopal, stem from the basis of the hierarchical constitution of the Church as canon 330, in turn indicates, the first canon of part II of this book. It states that, by divine institution, St. Peter and the other apostles constitute a college, and that, *pari ratione* (cf. *pen* 1°, *in fine*) the successor of Peter and the successors of the apostles, the pope and the bishops are united to each other. This establishes the character of divine law of the apostolic college and of the Episcopal College in which all bishops are members for the government of the universal Church. Therefore, as canon 336 states, that Episcopal College, of which the bishops are members in hierarchical communion with its head and its members, is an active subject, in union with the head and never without it, of the full and supreme power over the entire Church.[3]

The bishops share and exercise this supreme power in different ways, among which the ecumenical council should be noted, which constitutes the solemn manner of exercising power over the entire Church by the College of Bishops. It devolves upon the pope to determine and foster,

1. Regarding the concept of the people of God, cf. J. HERVADA-P. LOMBARDÍA, *El derecho del Pueblo de Dios*, I (Pamplona 1970), pp. 29–34; J. HERVADA, *Elementos de derecho constitucional canónico* (Pamplona 1987), pp. 42–46.

2. HERVADA, *Elementos de derecho...*, pp. 271–284.

3. Cf. HERVADA, *Elementos de derecho...*, pp. 281–283; A. PRIETO, "Cuestiones fundamentals," in *Nuevo derecho canónico* (Madrid 1983), pp. 69–70.

according to the needs of the Church, the other modes of joint collegial action of said power of the bishops dispersed throughout the world (c. 337). Among these modes in canon law, the Synod of Bishops as well as the bishops' conferences, are notable.[4] It devolves upon the former to promote the union between the bishops and the pope and to help the pope with advice along with the study of matters referring to the action of the Church in the world (c. 342). The mission of the bishops' conferences consists of making it possible for the bishops from a given nation or territory to exercise as a unit some pastoral functions with regard to the faithful of those places (c. 447).[5]

However, if the form of exercising episcopal power is projected over the entire people of God, care for the particular churches or dioceses is the specific function of the bishops, inasmuch as the diocese "is a portion of the people of God, which is entrusted to a bishop ... in such a way that, remaining close to its pastor and gathered by him through the Gospel and the Eucharist in the Holy Spirit, it constitutes a particular church. In this church, the one, holy, catholic and apostolic Church of Christ truly exists and functions" (c. 369).

If all the bishops project their power over the universal Church in this way, nonetheless, not all are entrusted with a diocese, although some cooperate with the diocesan bishops in their management, as for instance in the case of the auxiliary bishops.[6] No bishop in communion with Peter is outside of the College or the exercise of his participation in the ministry of Christ, but only some of them, certainly the majority, preside over particular churches into which the universal Church is divided and is manifested. Those who preside over them do so by virtue of divine law, in that divine law is in fact the proper, ordinary and immediate power with which each of them in their diocese exercises their pastoral office:[7] "the office as head of the particular churches was an apostolic office included in the mission that the apostles received from Christ. They had the office as head of the particular churches by divine law. Inasmuch as the bishops are their successors, the office as head of the particular church is possessed by each of the diocesan bishops by divine right. Although the manner of electing and appointing is a human right, the office and the functions and powers that it includes are by divine right and the bishops receive them from Christ, in such as way that the diocesan bishops can properly be called the vicars of Christ."[8]

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4. Cf. D. García Hervás, *Régimen jurídico de la colegialidad en el Código de derecho canónico* (Santiago de Compostela 1990), pp. 181–202, 247–286.
5. Cf. G. Feliciani, *Le conferenze episcopali* (Bologna 1974), *passim*.
6. Cf. G. Delgado, *Los obispos auxiliares* (Pamplona 1979), *passim*.
7. Cf. G. Delgado, *El consejo diocesano de gobierno* (Pamplona 1974), pp. 32–34, regarding the role and power of the diocesan bishop.
8. Hervada, *Elementos de derecho*, pp. 305–306.

The Code distinguishes between these two classes of bishops in canon 376, according to which "bishops to whom the care of a given diocese is entrusted are called diocesan bishops; the others are called titular bishops."

2. The article to which canons 381–390 belong is called precisely "Diocesan Bishops," bishops whose precise place in the constitutional structure of the Church we have sought to outline in what we have written thus far.

According to canon 381, each bishop presides precisely over the diocese "entrusted to his care."

In this way, the canon makes reference to the manner in which dioceses are created and the bishops who must govern them are appointed. If the existence of dioceses and the power of bishops over these dioceses is by divine law,[9] the actual determination of the number and distribution of the dioceses devolves upon the Roman Pontiff, who in the same way "freely appoints bishops or confirms those lawfully elected" (c. 377). As Vatican II established, setting forth the uniform tradition of the Church (cf. *LG* 20): "The canonical mission of bishops, on the other hand, can be made by legitimate customs that have not been revoked by the supreme and universal authority of the Church, or by laws made or acknowledged by the same authority, or directly by the successor of Peter himself. Should he object or refuse the apostolic communion, then bishops cannot be admitted to office" (*LG* 24).

The statement from canon 381 set forth above, according to which it devolves upon the bishop to exercise his power in the diocese entrusted to his care, also comes from Vatican II: "Individual bishops, in so far as they are set over particular churches, exercise their pastoral power over the portion of the people of God assigned to them, not over other churches nor the church universal" (*LG* 23), which words establish the exact form of the figure of the diocesan bishop, always without forgetting his already mentioned status as a member of the College, from which "care for the universal Church required by the institution and precept of Christ" is derived, which all bishops must have (*LG* 23).[10]

The manner in which the assignment of a given bishop to a particular diocese is determined is canonical mission. In fact, "episcopal ordination confers ontological participation in the sacred offices of teaching, sanctifying, and governing. These offices, if they are to acquire the configuration of true power, must be juridically defined by the hierarchical authority by

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9. Canon 329 *CIC*/1917 already affirmed that bishops "ex divina institutione peculiaribus ecclesiis praeficiuntur." Cf. L. DE ECHEVERRÍA, "Descripción de la organización eclesiástica," in *Derecho canónico* (Pamplona 1975), pp. 298–300.

10. Cf. R. JULIÁN REY, *El obispo diocesano en la génesis de la "Lumen Gentium"* (Pamplona 1977), *passim*.

way of a canonical mission, i.e., the conferral of an office or the assignment of specific members of the faithful, for whom the person concerned must discharge his functions."[11]

3. According to canon 381, the diocesan bishop has in his diocese all the power needed for the exercise of his pastoral office. Paragraph one of this canon indicates two more clarifications on this power: it characterizes it as ordinary, proper and immediate,[12] according to conciliar teachings in *Lumen gentium* 27 and *Christus Dominus* 8;[13] and it establishes the reserve that the Supreme Pontiff, through law or through a specific decree may remove some matter from that episcopal power, attributing it to the competence of the supreme authority itself or to another ecclesiastical authority.

The Code defines ordinary power as that which "by virtue of the law itself is attached to a given office" (c. 131). In a commentary on this canon, Arrieta writes that "ordinary power is that juridical power that is received *ipso iure* by the conferral and taking of possession of a specific office, in order that the responsibilities assigned by law to this office might be fulfilled (cf. c. 145 § 2)."[14] The opposite of ordinary power is delegated power, "which is granted to a person as such and not by reason of the office" (c. 131). Delegated power "is a non-organic way of exercising power... It is exercised in the name of another—the delegant."[15]

Due to its very nature, the complete opposite is the case with a power such as that granted by Christ to the apostles and integrated into an organic college; the power of the diocesan bishop in his diocese in fact lies in the episcopal office. Bishops, being of divine institution and participating in the power of Christ over the entire Church, with that power manifested by divine law over the different particular churches in which the one and only Catholic Church exists (c. 368), they are not delegates of the Roman Pontiff in the governance of their dioceses,[16] nor are they granted the respective pastoral function by themselves, but rather to the extent that through the canonical mission they are entrusted with the diocesan episcopal pastoral office, which puts them over a given diocese.

11. J.L. GUTIÉRREZ, commentary on bk. II, pt. II, sect. II, tit. I, ch. II: "De episcopis," in *Pamplona Com.*

12. Regarding the concepts and characteristics of the different types of power (ordinary and delegated, proper and vicarious), cf. E. LABANDEIRA, *Tratado de derecho administrativo canónico*, updated 2nd ed. (Pamplona 1993), pp. 119–140.

13. Cf. DELGADO, *El consejo diocesano*, p. 32.

14. ARRIETA, commentary on c. 131 in *Pamplona Com.*

15. Ibid.

16. "No son en modo alguno unos vicarios o delegados del Romano Pontífice en la misión y oficio que desempeñan en sus iglesias" (REY, *El obispo diocesano*, p. 92; the author gives special attention to this theme, using and citing a great deal of documentation).

At the same time, their power over the diocese is proper. The Code (c. 131) indicates that the power of ordinary governance can be proper or vicarious. The proper nature of the power of the diocesan bishop is evidenced in that "the conceptual basis of this power is the sacramental ontological element which the holder of the principal office acquires by receiving the *potestas sacra*," while ordinary vicarious power "is exercised in the name of the one with proper power. Technically, however, one who exercises vicarious power is acting with full organic responsibility (cf. cc. 1734ff). Vicarious power arises from the juridical transference of competence or decentralization of part of the functions of the office with proper power."[17]

Certainly the pope determines the establishment and distribution of the dioceses throughout the world according to the needs of the Church; but the creation of new dioceses does not imply the result of deconcentration of a part of the functions of the papal office, which would imply that the power of diocesan bishops would become vicarious.[18] Neither could the pope ignore the diocesan organization of the universal Church and exercise his office as the supreme pastor through vicars representing him throughout the world, even if these vicars are titular bishops. The figure of the diocese and that of the diocesan bishop belong to the constitutional structure of the Church itself.[19] From this, one can infer with absolute evidence not only the ordinary nature but also the proper nature of the power of diocesan bishops, who exercise their episcopal office "united in one college or body for the care of the universal church," and, in turn, "they exercise this function individually as regards that portion of the Lord's flock which has been entrusted to each one of them" (*CD* 3), inasmuch as they are "designated by the Holy Spirit" as "successors of the apostles as pastors of souls" (*CD* 2).[20]

Lastly, the power of diocesan bishops is immediate. The meaning of this term must be specified, given that papal power is "supreme, full, immediate and universal in the Church" (c. 331). This means that "by virtue of his office, the Roman Pontiff not only has power over the universal Church, but also has pre-eminent ordinary power over all particular churches" (c. 333), with which, as the canon itself indicates, "the proper, ordinary, and immediate power of the bishops of the particular churches entrusted to their care is at the same time strengthened and defended." Thus the primatial power of the pope is "over all, whether pastors or faithful," by "reason of his office as Vicar of Christ, and as pastor of the entire

17. ARRIETA, commentary on c. 131, cit.
18. Cf. G. DELGADO, *Desconcentración orgánica y potestad vicaria* (Pamplona 1971), p. 1, and *El Consejo diocesano*, p. 32.
19. Cf. HERVADA, *Elementos de derecho*, pp. 174–178.
20. Cf. A. J. GOMES MARQUES, *O bispo diocesano na génese do "Christus Dominus"* (Pamplona 1976), *passim*.

Church," with "full, supreme and universal power over the whole Church, a power which he can always freely exercise" (*LG* 22).[21]

4. Therefore, two immediate powers, that of the pope and that of the diocesan bishop, come together over the particular church, without causing a diminishing, but rather a strengthening of the latter by the former. It could not be otherwise without undermining the hierarchical structure established by Christ for his Church, in which the pope, His Vicar, enjoys direct power over the entire Church and all its members. The fact that the diocesan bishop equally enjoys immediate power over his diocese is possible given that his power is by divine law: "the pastoral mission of the diocesan bishop—and with it his power—is full, but not supreme. It is subordinate to the supreme power of the Church, that is, to the pope and to the Episcopal College."[22]

Thus, the second statement established in canon 381 on the power of diocesan bishops is better understood when it states that those matters that by law or by decree of the Supreme Pontiff are reserved for the supreme authority or another ecclesiastical authority are excluded from the exercise of their pastoral function.

This possibility for reserve entails precisely a way of exercising immediate papal power over each and every one of the dioceses and each and every one of the faithful, bishops included. They are "vicars and legates of Christ" to govern the particular churches, but the "exercise" of their power is "ultimately controlled by the supreme authority of the Church" and "should the usefulness of the Church and the faithful require that," it can be divided within certain limits (*LG* 27). In this line, one must understand the possibility of limitation of the authority of the diocesan bishop established by canon 381.

By his own decree, the pope can confer upon himself or upon another ecclesiastical authority any matter that consequently would be excluded from the exercise of episcopal power. By law, this limitation exists in various situations. Thus we can note the so-called major causes that are enumerated in canon 1405, cases over which the right of the pope to judge them is exclusive, while according to canon 1406, the incompetence of all other judges is absolute.

Canon 1417 is also worth noting according to which "because of the primacy of the Roman Pontiff, any of the faithful may either refer their case to or introduce it before the Holy See, whether the case be contentious or penal. They may do so at any grade of the trial or at any stage of the suit." In such a situation, the exercise of jurisdiction by the judge who began to handle the case is not suspended, "unless the Apostolic See has indicated to [the judge] that it has reserved the case to itself" (c. 1417 § 2).

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21. Cf. HERVADA, *Elementos de derecho*, pp. 271–277.
22. Ibid., p. 305.

The reference to the fact that this recourse to the pope is the consequence of his primacy over the whole Church is sufficient evidence of the double effect of the immediate pontifical power over all the particular churches in the meaning referred to in canon 381.

5. What we have said about the diocesan bishop is also established in paragraph two of canon 381 regarding another series of prelates, likewise put over portions of the universal Church that by provision of law are similar to the dioceses.[23] They are the divisions or communities of the faithful referred to in canon 368: territorial prelatures and abbeys, vicariates and prefectures apostolic, and apostolic administrations erected in a stable manner.

Canons 369–371 specify what each of these divisions or portions of the people of God must be. They owe their origin to certain historical and social circumstances, such that, in meeting said circumstances, the Holy See decides not to erect a given territory or group of the faithful as a diocese, substituting one of the other previously cited institutes for the diocese.

The motive is always the good of the Church and of the faithful, in view of the particular circumstances requiring the measure: "the same reality is included under different names; or, in the case of newly-formed churches, or for historical reasons, or political difficulties, the pope finds it inadvisable to erect a diocese and opts for any of these formulas, the governance of which nonetheless hardly differs in practice from an ordinary diocese."[24]

Very often, prelatures and abbeys are owing to historical reasons. Vicariates and prefectures are usually territories, commonly missionary, in that the number and establishment of the faithful is still small, and greater consolidation and extension of the church is awaited in order to elevate them to a diocese. Stable apostolic administrations rather arise from serious circumstances that require that a concrete community of the faithful not be governed by a diocesan bishop, but rather by a special delegate of the Holy See. A common characteristic of all prelates governing these ecclesiastical divisions is that the rank of bishop is not required, although as a rule, prelates and vicars apostolic do have this rank. On the other hand, abbots and prefects do not, in that it is impossible to establish a rule for apostolic administrators, given the uniqueness of the reasons leading to their establishment in each case. In any event, all of these figures have the

23. Cf. DE ECHEVERRÍA, *Descripción*, p. 299, on the 1917 Code; the new aspects introduced in the current Code, in J. L. GUTIÉRREZ, commentary on cc. 368–371, in *Pamplona Com*, and "Organización jerárquica de la Iglesia," in *Manual de derecho canónico*, 2nd ed. (Pamplona 1991), pp. 381–390.

24. DE ECHEVERRÍA, *Descripción*, pp. 299–300.

pastoral duty of governing a portion of the people of God entrusted to them. With either priests or, if they are bishops, titular and non-diocesan bishops, their jurisdiction is not by divine law, but pontifical. Their power is immediate as that of diocesan bishops, and, in the case of prelates and abbots, it is also proper (c. 370), while that of vicars apostolic and prefects, governing their people in the name of the Roman Pontiff is vicarious, as well as the apostolic administrator (c. 371).[25]

25. See also commentary on cc. 368–371 for a thorough examination of this topic.

382 **§ 1. Episcopus promotus in exercitium officii sibi commissi sese ingerere nequit, ante captam dioecesis canonicam possessionem; exercere tamen valet officia, quae in eadem dioecesi tempore promotionis iam retinebat, firmo praescripto can. 409, § 2.**

§ 2. Nisi legitimo detineatur impedimento, promotus ad officium Episcopi dioecesani debet canonicam suae dioecesis possessionem capere, si iam non sit consecratus Episcopus, intra quattuor mense a receptis apostolicis litteris; si iam sit consecratus, intra duos menses ab iidem receptis.

§ 3. Canonicam dioecesis possessionem capit Episcopus simul ac in ipsa dioecesi, per se vel per procuratorem, apostolicas litteras collegio consultorum ostenderit, praesente curiae cancellario, qui rem in acta referat, aut, in dioecesibus noviter erectis, simul ac clero populoque in ecclesia cathedrali praesenti earundem litterarum communicationem procuraverit, presbytero inter praesentes seniore in acta referente.

§ 4. Valde commendatur ut captio canonicae possessionis cum acto liturgico in ecclesia cathedrali fiat, assistente clero et populo.

§ 1. One who is promoted a Bishop cannot become involved in the exercise of the office entrusted to him before he has taken canonical possession of the diocese. However, he is able to exercise offices which he already held in the same diocese at the time of his promotion, without prejudice to can. 409 § 2.

§ 2. Unless he is lawfully impeded, one who is not already consecrated a Bishop and is now promoted to the office of diocesan Bishop, must take canonical possession of his diocese within four months of receiving the apostolic letter. If he is already consecrated, he must take possession within two months of receiving the apostolic letter.

§ 3. A Bishop takes canonical possession of his diocese when, personally or by proxy, he shows the apostolic letter to the college of consultors, in the presence of the chancellor of the curia, who makes a record of the fact. This must take place within the diocese. In dioceses which are newly established he takes possession when he communicates the same letter to the clergy and the people in the cathedral Church, with the senior of the priests present making a record of the fact.

§ 4. It is strongly recommended that the taking of canonical possession be performed with a liturgical act in the cathedral Church, in the presence of the clergy and the people.

SOURCES: § 1: c. 334 § 2; *CD* 26; *ES* I, 13 § 3
§ 2: c. 333
§ 3: c. 334 § 3
§ 4: *SC* 41; Paulus PP. VI Ap. Const. *Mirificus eventus*, 7 Dec. 1965 (*AAS* 57 [1965] 948–949)

CROSS REFERENCES: cc. 379, 381, 482, 502, 1013

COMMENTARY

Alberto de la Hera

1. There are two elements needed for one of the faithful to acquire the rank of bishop of a given diocese: episcopal ordination, by which the ordained party receives the fullness of the sacrament of orders and formally becomes a member of the College of Bishops; and canonical mission, conferred by the Roman Pontiff, which particularly entrusts to him a portion of the people of God so that he governs with ordinary, proper, and immediate power through the exercise of the respective pastoral office (c. 381).

Ordination is a sacramental act that could be valid, though unlawful, even if it is against the will of the Roman Pontiff (c. 1013; cf. c. 1382) who is the sole authority to appoint or confirm bishops (c. 377; *CD* 20). Through ordination, together with the office of sanctifying, bishops also receive the offices of teaching and governing (c. 375). The canonical mission is a juridic act whereby the pope specifies for a given bishop the jurisdiction he received mediately through the sacrament: a jurisdiction shared within the College over the whole Church, and projected over a diocese upon receipt of papal appointment to govern the diocese through performance of the episcopal office.

Doctrine has discussed at length the relationship between sacramental ordination and canonical mission, in order to determine which vehicle transmits ecclesiastical power. "The transfer of power that Christ made to the apostles does not present difficulties, inasmuch as it was not subject to any procedure. There is no evidence that it was done through any given rite, besides the word. But there is no doubt he conferred upon them the power to bind on earth and to bind in heaven, to govern and sanctify, to forgive and confect the Eucharist. The difficulty lies in specifying how the power of Christ and of his Church is transmitted to the successors of

Peter and to the other apostles, and to their collaborators. The various theories concerning the vehicle for transmitting the power of governance in the Church can be reduced to three: either it is transmitted through canonical mission, the sacrament of orders, or both at the same time."[1]

It seems most advisable to tend towards this latter approach to the problem. "According to Mörsdorf, the bishop receives through the sacrament not only the power of orders, which allows him to perform acts of worship, but also a part of the power of jurisdiction, that is, an indelible material nucleus of the power of governance. That nucleus allows him to be a member of the College of Bishops (if his consecration is legitimate) and to validly consecrate others; but it must be completed by the power received through the canonical mission, in order that said power of governance can be full in his own sphere of action."[2]

2. However, the combination of both of these two elements, consecration and canonical mission, are not sufficient for a diocesan bishop to begin to govern his diocese. The juridical requirement of the taking of possession is also needed. In fact, it is an administrative requirement, common to any other position that may be filled in ecclesiastical as well as civil society: the function for which any authority has been designated may begin to be exercised from the taking of possession of the office. In this case it is the particular episcopal office of the pastor of a specific diocese.

The Code does not mention the taking of possession when discussing the ecclesiastical office and the modes of acquisition (cc. 145–183). However it does then mention it in canon 382 as a requirement without which the conferral of office is not sufficient to allow the diocesan bishop to begin to exercise governance of his diocese. As Arrieta has indicated when considering the office, "although the Code makes no reference to it, one of the indispensable requirements for the acquisition '*pleno iure*' of an office is the taking of possession. It is only from this moment that the incumbent may exercise the rights inherent to the office,"[3] an assertion that corresponds exactly with what is stated in canon 382.

The same thing has been indicated by Lombardía, when he writes that "the 'canonical provision' of office is a complex procedure, which consists of three phases: 'designation of the person,' 'conferral of the juridical title,' and 'taking of possession'."[4] Then, referring to the various ways of conferring the office established by canon 147, he adds, "legitimate 'presentation' and 'election' give the candidate an '*ius ad rem.*' On

1. Cf. E. LABANDEIRA, *Tratado de derecho administrativo canónico*, updated 2nd ed. (Pamplona 1993), p. 79.
2. Cf. ibid., pp. 80–81.
3. ARRIETA, commentary on cc. 146–158, in *Pamplona Com.*
4. P. LOMBARDÍA, *Lecciones de derecho canónico* (Madrid 1984), p. 121.

the other hand, 'free conferral,' 'acceptance' of the presented party, 'confirmation' of the elected person, and 'admission' of the nominee give an '*ius in re*'; that is, the right to take possession of the office."[5]

Therefore, in spite of the omission of this requirement in the canons referring to the office, a formal procedure for the taking of office by diocesan bishops has been in fact established. The taking of possession must be subject to some formal requirements, and canon 382 provides for this provision.

The taking of possession, according to doctrine, "is a mixed act in which the physical person named and the provisions established therefore by law take part; this act usually seems to entail certain formalities."[6] The function of canon 382 is to determine the provisions that, together with the designated diocesan bishop, must take part in his taking possession and the formalities that must be observed for this.

3. The canon distinguishes between an already established diocese and a newly erected diocese. In the latter case, naturally, the provisions that, in the first case, would have to take part in the taking of possession by the bishop have not yet been constituted, and consequently, the law anticipates this special situation, establishing equally exceptional measures.

When the Bishop has been designated for a diocese that already exists, he must take possession of it, himself or by a proxy, showing the apostolic letter of appointment to the college of consultors, in the presence of the chancellor of the curia who records the acts.

Although the Code does not define the figure of the proxy, it makes frequent use of it in connection with voting in canonical elections (c. 167), the exercise of their rights by the members of private associations lacking juridical personality (c. 310), the reception of the pallium by the metropolitans (cc. 355 and 437), pastoral visits (c. 396), participation in particular councils (c. 444) and in diocesan synods (c. 464), and the celebration of marriage (cc. 1071, 1105, 1105).[7] Therefore, it is a regular figure in canon law, the participation of which implies that the principal has granted power of attorney. Canon 382 indicates no requirement on this matter. Therefore, it must be assumed that the normal requirements that juridical doctrine deems necessary for the validity and efficacy of the mandate come into play: the continuing willingness of the principal to take posses-

5. Ibid., p. 122.
6. J.A. SOUTO, "Teoría de la organización eclesiástica," in *Derecho canónico* (Pamplona 1975), p. 268.
7. For a study of the role of the procurator, specifically in regard to marriage cases, listing the requirements and the qualifications he needs to act in the place of the bishop, especially when it is a matter of a ruling which concerns the will or the form, cf. P. LOMBARDÍA, "Supuestos especiales de relación entre consentimiento y forma," in *Derecho canónico* (Pamplona 1975), pp. 503–504.

sion of the diocese and to be represented by the proxy at the time that the proxy exercises the mandate, taking into account that a formal preliminary derogation of the power of attorney would be required in order that the power of attorney have value at the time the proxy exercises his office.[8]

4. The apostolic letter referred to in canon 382 is certainly that of the appointment of the bishop for the diocese in question. Although the canon merely mentions the "apostolic letter," without more explanation, we can infer what we are indicating by logic as well as by the analogy of canon 382 to canon 404, in which it expressly indicates that "the coadjutor bishop takes possession of his office when, either personally or by proxy, he shows the apostolic letter of his appointment ..." The same is provided in paragraph two of the same canon for the auxiliary bishop. In canon 405, when indicating the rights and obligations of these two types of bishops, it again refers to "the letter of appointment."

The bishop or his proxy must present the apostolic letter to the college of consultors of the diocese. In the canonical tradition of centuries, and in the 1917 Code, this duty was attributed to the cathedral chapter (*CIC*/1917, c. 334).[9] In the current Code, the canons have lost a large part of their force, and now *Presbyterorum ordinis* 7, "entrusts the presbyteral council with a large proportion of the duties that the 1917 Code gave the cathedral chapter regarding the governance of the diocese. It meant, in fact, that the presbyteral council would replace the chapter in the mission of advising the bishop on questions of governance. The documents issued after the Council have followed the same criteria."[10] The college of consultors, before which the diocesan bishop must present the letter of appointment in his taking of possession, is precisely a provision that arises from the presbyteral council: "From among the members of the presbyteral council, the diocesan bishop freely appoints not fewer than six and not more than twelve priests, who are for five years to constitute the college of consultors. To it belong the functions determined by law" (c. 502 § 1).[11] Among these functions is included precisely participation in the taking of possession by the new bishop, as provided in canon 382. And it should be recalled that it is an option that the bishops' conferences "can determine that the functions of the college of consultors be entrusted to the cathedral chapter" (c. 502 § 3). In any event it is clear that the new

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8. The one giving the mandate "shall not have revoked the power" and "shall have remained that state of active will from which the granting of the power arose" (ibid., p. 504).

9. Cf. L. DE ECHEVERRÍA, "Descripción de la organización eclesiástica," in *Derecho canónico* (Pamplona 1975), pp. 301–302.

10. J.I. ARRIETA, commentary on book. II, part II, section II, title III, chapter IV: "The Chapter of Canons," in *Pamplona Com.*

11. Regarding the presbyteral council and the college of consultors, cf. J.L. SANTOS, "Función de regir," in J. MANZANARES–A. MOSTAZA–J.L. SANTOS, *Nuevo derecho parroquial* (Madrid 1988), pp. 610–613.

bishop takes possession before the college of consultors named by his predecessor, or alternatively before the cathedral chapter in existence before his arrival at the diocese, should the chapter be in charge of the functions of the consultors.

5. The last formality of the diocesan bishop's taking possession is the presence of the chancellor of the curia, who officially records the event. It is precisely this fundamental duty that canon 482 § 1 attributes to the chancellor: "In each curia a chancellor is to be appointed, whose principal office, unless particular law states otherwise, is to ensure that the acts of the curia are drawn up and dispatched, and that they are kept safe in the archive of the curia."

6. In the event that it is a newly erected diocese, logically there will be no college of consultors or chancellor. Canon 382 then attributes the respective duties to the clergy and people present at the act of taking of possession and the senior priest among those present. It is curious that the Code (c. 382 § 3) expressly indicates that the letter of appointment in this situation shall be presented by the bishop to the clergy and people "present in the cathedral church." Thus paragraph four of the same canon establishes that the celebration of this ceremony in the cathedral, in a liturgical act attended by the clergy and the people, is most advisable, which in itself implies that it is not mandatory. It must be understood that the provisions of paragraph three are not a requirement for validity, and that the bishop assigned to a newly erected diocese necessarily takes possession before the clergy and people attending the ceremony, but it is not essential that it be held in the cathedral church nor be accompanied by a liturgical act.

7. Paragraph two of the canon indicates a time line for the taking of possession of diocesan bishops: four months, from receipt of the letter of his appointment, if episcopal ordination has not yet been received, and two months if he is already ordained. The difference in the time line is logical, but it is also a consequence of the provisions of canon 379, according to which any person promoted to the episcopate must receive ordination, unless prevented by a lawful reason, before a three-month lapse of time from the day the apostolic letter was received. Should the term of two months for taking possession of the diocese be maintained, the term in canon 379 would be useless. On the other hand, extending the term to four months for whoever has three months for ordination, makes sense, so much more so that canon 379 itself prohibits the taking of possession of the office before receiving episcopal ordination.

8. It must be noted here that all the norms of canon 382 considered thus far concerning the taking of possession by diocesan bishops are actually established in this canon indirectly. Paragraph one begins with a prohibition: those promoted to the episcopate, according to the canon, must not interfere in the exercise of the office entrusted to them before taking canonical possession of the diocese. The wording is ambiguous, and if it

were not for the final mention of the diocese, the norm should not be included in the article on diocesan bishops but rather in the general article on bishops. The logical thing would have been to indicate here that those who have been assigned to govern a diocese must not interfere in the exercise of the office until having taken possession. However, accepting the canon as it was written, its main objective is not to establish the norms on the taking of possession, but rather to establish the moment at which the new bishop begins to exercise governance. Inasmuch as that moment is the taking of possession, the following paragraphs 2–4 of the canon are intended to regulate it.[12]

In any event, to begin the canon with the statement that a new bishop can exercise his pastoral function after taking of possession would have juridically been a more logical approach to the legal text, and also more consistent with the obligation to be ordained that is preceded by the appointment and followed by the taking of possession, according to canon 379. Canon 382 thus would have been an exact juridical expression, as canon 379, of the three moments or phases making up the canonical provision of the office: a) designation of the titular, b) conferral of the title, and c) taking of possession.

9. The same paragraph 1 of canon 382 also regulates the situation of a new diocesan bishop in the diocese for which he has been appointed in the event that prior to the appointment he already holds some office therein. The canon establishes that he may continue to exercise these offices until he takes possession, without prejudice to canon 409 § 2.

This latter paragraph provides for the case in which the office held in the diocese by the new diocesan bishop is that of auxiliary bishop. The 1917 Code determined that auxiliary bishops automatically cease when the diocesan bishop ceased in his position (c. 355 § 2). The new Code, on the other hand, establishes in canon 409 § 2 a different norm: the auxiliary bishop who is appointed as the new bishop in the same diocese, until his own taking of possession, shall continue to carry out any and only the powers and faculties he had as the vicar general or the episcopal vicar, and he carries them out under the diocesan administrator who has been leading the diocese during the vacancy, unless, naturally, he himself has been elected as said administrator as recommended by *Christus Dominus* 26.

10. From an examination of canon 382, apart from the defects in the systematization of the items that have already been indicated, one can precisely infer the place of the taking of possession as an administrative

12. An analysis of the juridical consequences, and therefore the respective juridical transcendence of each phase comprising the provision of the office, appears in SOUTO, "Teoría de la organización," pp. 270–271.

requirement that protects juridical security, completing the process of the canonical provision of the diocesan episcopal office. Moreover, one last consideration should not be overlooked: for centuries, and until quite recent times, the taking of possession had a more notable public importance and social solemnity, in detriment to episcopal ordination, which was relegated to an act without prominence or publicity, which seemed more like a preliminary requirement for the taking of possession.

That imbalance between the reception of the sacrament that incorporates the person receiving it into the Episcopal College, conferring upon him the fullness of the priesthood and the episcopal power in all its dimensions, and a necessary technical juridical requirement for the effective exercise of the pastoral office has been recalled in doctrine after that time in which, since the pontificate of Pius XII and especially since Vatican II, the Church has stressed the importance of the reception of the sacrament over any other aspect of the taking on of the episcopal office.

Specialists working on the drafting of chronological lists of bishops have been able to confirm how difficult it is to find in the past information on episcopal ordinations, while there is abundant information on the taking possession and solemn entries into the dioceses. In an attempt to reconstruct the biography of past bishops, "we can probably not find any information on their priestly ordination or their episcopal ordination, which for them would be a mere formality, but we will have complete familiarity with how they took possession and especially what their triumphal entry into the diocese was like... They are catalogs of who 'has governed,' although it is understood that that 'governing' required consecration as a preliminary 'formality.'"[13]

In fact "it is not necessary to state that the great historical renown of the episcopal class comes from the power of jurisdiction much more than from the power of orders,"[14] a reality reflected in the old relevance of the taking of possession.

Pius XII began the innovation in this area,[15] when he established special solemnities for the episcopal ordinations,[16] and later it has advanced considerably along that same line, and the conciliar teaching on the episcopal *munus* and the value of ordination has found an exact reflection, as doctrine also indicates,[17] in the new rite of episcopal ordination, in the *Directory for the Pastoral Ministry of the Bishops*, in the new Ceremonial

13. L. DE ECHEVERRÍA, *Episcopologio español contemporáneo (1868–1985)* (Salamanca 1986), pp. 13–14.
14. P. ÁLVAREZ, art. "Obispo," in Q. ALDEA–T. MARÍN–J. VIVES, *Diccionario de historia eclesiástica de España*, III (Madrid 1973), p. 1790.
15. Cf. Ap. Const. *Episcopalis consecrationis*, November 30, 1944, in *AAS* 37 (1945), pp. 131–132.
16. Cf. the references given by DE ECHEVERRÍA, *Episcopologio*, p. 21.
17. Cf. ibid, p. 20.

of Bishops and even in the present Roman Ritual.[18] The taking of possession, regulated as we have seen in canon 382, does not lose any of its meaning and juridical sense. It conserves its liturgical dignity, but it does not replace episcopal ordination in importance, which possesses such a distinguished role in the sacramental and constitutional structure of the Church.

18. DE ECHEVERRÍA, ibid., gives all the reference dates to these documents.

383 **§ 1. In exercendo munere pastoris, Episcopus dioecesanus sollicitum se praebeat erga omnes christifideles qui suae curae committuntur, cuiusvis sint aetatis, condicionis vel nationis, tum in territorio habitantes tum in eodem ad tempus versantes, animum intendens apostolicum ad eos etiam qui ob vitae suae condicionem ordinaria cura pastorali non satis frui valeant necnon ad eos qui a religionis praxi defecerint.**

§ 2. Fideles diversi ritus in sua dioecesi si habeat, eorum spiritualibus necessitatibus provideat sive per sacerdotes aut paroecias eiusdem ritus, sive per Vicarium episcopalem.

§ 3. Erga fratres, qui in plena communione cum Ecclesia catholica non sint, cum humanitate et caritate se gerat, oecumenismum quoque fovens prout ab Ecclesia intellegitur.

§ 4. Commendatos sibi in Domino habeat non baptizatos, ut et ipsis caritas eluceat Christi, cuius testis coram omnibus Episcopus esse debet.

§ 1. In exercising his pastoral office, the diocesan Bishop is to be solicitous for all Christ's faithful entrusted to his care, whatever their age, condition or nationality, whether they live in the territory or are visiting there. He is to show an apostolic spirit also to those who, because of their condition of life, are not sufficiently able to benefit from ordinary pastoral care, and to those who have lapsed from religious practice.

§ 2. If he has faithful of a different rite in his diocese, he is to provide for their spiritual needs either by means of priests or parishes of the same rite, or by an episcopal Vicar.

§ 3. He is to act with humanity and charity to those who are not in full communion with the Catholic Church; he should also foster ecumenism as it is understood by the Church.

§ 4. He is to consider the non-baptised as commended to him in the Lord, so that the charity of Christ, of which the Bishop must be a witness to all, may shine also on them.

SOURCES: § 1: *CD* 16, 18; *DPMB* 153–157
§ 2: *CD* 23, 3
§ 3: *LG* 27; *CD* 16; *DPMB* 48, 158
§ 4: *CD* 11, 16; *DPMB* 159

CROSS REFERENCES: c. 375

COMMENTARY

Alberto de la Hera

1. Canons 383 to 390 contain a series of directions and counsel given to diocesan bishops by the legislator with a view to the pastoral care of their dioceses, as well as the exercise of their respective powers of teaching and sanctifying, together with the power to govern as pastors of the Church.[1] Although to a large extent they are canons that are expressed more through exhortations than through juridical imperatives, their presence in the Code is justified. Nonetheless, without them the mission of diocesan bishops would be clearly incomplete and we would only have a partial view of what is entailed in their pastoral function.

Vatican II (*LG* 27) stated that "the bishops, as vicars and legates of Christ, govern the particular churches assigned to them by their counsels, exhortations and example, but also by this authority and sacred power." Note that, according to this text, the office of governance entails counsels, exhortations, and example as well as the exercise of power. It is this sacred power, that *Lumen gentium* mentions, the power of proper, ordinary and immediate jurisdiction, to which the text refers, then specifying that "in virtue of this power bishops have a sacred right and a duty before God of legislating for and of judging their subjects, as well as regulating everything that concerns the good order of divine worship and of the apostolate" (ibid.).

This juridical dimension of the office of governance is accompanied by the non—juridical function that consists of counsel, exhortations and example that the bishops certainly have the duty in conscience to offer their subjects, but the practice of which can entail neither a juridical activity nor an activity with juridical effects.

Undoubtedly, if a bishop does not fulfill his duties, he is improperly governing the diocese and he deserves to have measures taken by the higher authority, the pope together with the Holy See, which may be of a juridical nature. It should also be recalled that the offices of teaching and sanctifying are as inherent to the pastoral office of the bishops as the exercise of the power of jurisdiction.[2]

What we have just set forth is included in the Code, and it constitutes the doctrine of Vatican II, in accord with the most venerable tradition of the Church. This is seen in the following canons up to 391, the first of the

1. Cf. A. PRIETO, "Cuestiones fundamentals," in *Nuevo derecho canónico* (Madrid 1983), pp. 57–58.
2. Cf. J. HERVADA, *Elementos de derecho constitucional canónico* (Pamplona 1987), p. 238.

canons designed to regulate the office of governance of the diocesan bishops, as evidenced in the words of the canon itself: "The diocesan bishop governs the particular church entrusted to him with legislative, executive and judicial power, in accordance with the law." This language is an immediate technico-juridical expression, clearly different from that prevailing in canons 383–390, which were drafted in terms of exhortations from the Church and from its head to the pastor of the diocese: "*sollicitum se praebeat,*" "*provideat,*" "*se great,*" "*peculiari sollicitudine prosequatur,*" "*audiat,*" etc.

2. To be specific, canon 383 must be understood as a projection over the proper diocese of the "*sollicitudo omnium ecclesiarum*" that must be felt by each bishop because he is a member of the College of Bishops, because Christ sent his apostles to all peoples (*LG* 19), and in the bishops "endures the office, which the apostles received, of shepherding the Church" (*LG* 20). As a result, the bishops "exercise their own proper authority for the good of their faithful, indeed even for the good of the whole Church" (*LG* 22). Also, it is obvious that in the universal Church which extends throughout the world, there is manifested the immense variety of the personal situations of people in relationship to faith in the true God and with his Church, with other religions and all types of religious confessions, and with the fact itself of the origin and destiny of all people.

Given that "the individual bishops are the visible source and foundation of unity in their own particular Churches, which are constituted after the model of the universal Church" (*LG* 23), that same manner of relationship between human beings and the Divinity, in its numerous forms, is also manifested one way or another and with more or less intensity in all the dioceses, and requires from the diocesan bishop care that is a concrete expression of the care he must render as a member of the College to the universal Church.

Vatican II also adds, "Individual bishops, in so far as they are placed at the head of particular churches, exercise their pastoral power over the portion of the people of God assigned to them, not over other churches or the Church universal. But in so far as they are members of the episcopal college and legitimate successors of the apostles, which the institution and precept of Christ decree, each is bound to have such care and solicitude for the whole Church which, though it be not exercised by any act of jurisdiction, does for all that redound in an eminent degree to the advantage of the universal Church" (*LG* 23).[3] Such care is exercised in the pastoral action in which the characteristic possessed by all bishops is manifested as "teachers of doctrine, the priests of sacred worship" (c. 375 § 1).

3. Cf. ibid., p. 282.

Therefore, in repeating on a scale characteristic of the diocese the variety of situations in which souls throughout the world are found, the Code suggests that diocesan bishops repeat on that scale the care that the Supreme Pontiff renders to all people from his office as Vicar of Christ constituted for the salvation and sanctification of all souls.

That universal "*sollicitudo*" of the pope is manifested today in a remarkable richness of provisions designed in the Roman Curia to project over all humanity the light of the true faith, at the same time presenting before all people the living example of Christ, in respect and understanding for all free options for human beings with regard to the problem of transcendency.

The Holy See takes into account in the first place the variety of rites in the one Catholic Church (Congregation for the Eastern Churches) as well as the expansion of the Church among those who still do not know Christ (Congregation for the Evangelization of Peoples). It has also established a pontifical council for the fostering of the unity of Christians, another for inter-religious dialogue, another for dialogue with non-believers, and of course it does not forget its own faithful who are permanently or temporarily away from their diocese of origin or habitual residence (Pontifical Council for the Pastoral Care of Migrants and Itinerant People).[4] Also, if we return to canon 383, the legislator advises that the diocesan bishop should pastorally look after not only his own faithful who reside in the diocese, but also those who are occasionally visiting there; and not only those who one way or another practice the faith, but also those who have been away from it; that he provide with the means at his disposal the pastoral care towards the faithful of rites other than those of the diocese; that he show charity towards Christians separated from the root of the one Church of Christ and that he thereby foster ecumenism; and that he make the charity of the Lord shine for the non-baptized. All of this constitutes a manifestation of the pastoral office at the diocesan level in exact relation to that exercised by the Roman See for the whole world.

Still, a specific point of paragraph one of the canon—the care of all the faithful whether they live in the territory or whether they are visiting there—constitutes a specific consequence of the provisions of canon 13 § 1: "Particular laws are not presumed to be personal, but rather territorial, unless it is established otherwise."[5]

4. Cf. *PB* and *RGCR*. The *Annuario pontificio* every year includes precise historical notes regarding the different organizations of the Roman Curia. Cf. J.-B. D'ONORIO, *Le pape et le gouvernement de l'Église* (Paris 1992), pp. 352–389 (the Pontifical Council for Dialogue with Non-Believers has been merged with the Pontifical Council for Culture, thanks to the mp *Inde a Pontificatus*, March 25, 1993, *AAS* 85 [1993] pp. 549–552).

5. Cf. A. BERNÁRDEZ CANTÓN, *Parte general de derecho canónico* (Madrid 1990), pp. 118–120.

In more than a few conciliar documents and documents of the Holy See, diocesan bishops may find guidelines on the pastoral care of the various classes of persons who are mentioned in this canon 383. These include: *Christus Dominus* 18, *Apostolicam actuositatem* 11 and *Gaudium et spes* 61. Among the most recent provisions of the Holy See, it is useful to consult those cited by J.L. Gutiérrez[6] in a sufficiently representative list.

6. J.L. GUTIÉRREZ, commentary on c. 383, in *Pamplona Com.*

384 **Episcopus dioecesanus peculiari sollicitudine prosequatur presbyteros quos tamquam adiutores etconsiliarios audiat, eorum iura tutetur et curet ut ipsi obligationes suo statui proprias rite adimpleant iisdemque praesto sint media et institutiones, quibus ad vitam spiritualem et intellectualem fovendam egeant; item curet ut eorum honestae sustentationi atque assistentiae sociali, ad normam iuris, prospiciatur.**

The diocesan Bishop is to have special concern for the priests, to whom he is to listen as his helpers and counselors. He is to defend their rights and ensure that they fulfil the obligations proper to their state. He is to see that they have the means and the institutions needed for the development of their spiritual and intellectual life. He is to ensure that they are provided with adequate means of livelihood and social welfare, in accordance with the law.

SOURCES: *LG* 28; *CD* 16; *PO* 20, 21; *ES* I, Introductio, 7, 8; *DPMB* 107–117

CROSS REFERENCES: cc. 273–289

COMMENTARY

Alberto de la Hera

Canon 384 specifies the pastoral function of bishops in connection with a series of rights and obligations that, according to canon law, belong to the presbyters, and it devolves upon the diocesan bishops to carry out the respective norms in their dioceses.

The canon declares that presbyters are the cooperators and counselors of the bishop,[1] using for this purpose the same words used by Vatican II (*PO* 7): Bishops, "because of the gift of the Holy Spirit that has been given to priests at their ordination, will regard them as their indispensable helpers and advisers in the ministry and in the task of teaching, sanctifying and shepherding the people of God."

Inasmuch as the presbyters fulfill this dual mission, the responsibility of the bishop shall be "the burden of sanctifying their priests;" "to exercise the greatest care in the progressive formation of their diocesan body of priests." "They should be glad to listen to their priests' views and even

1. Cf. Y.M.J. CONGAR, *Santa Iglesia* (Barcelona 1965), pp. 214–270; J. HERVADA, *Elementos de derecho constitucional canónico* (Pamplona 1987), p. 305.

consult them and hold conferences with them about matters that concern the needs of pastoral work and the good of the diocese" (*PO* 7). These conciliar norms have found their technical manifestation in the Code. Thus, canon 384 specifies three aspects in which the bishops must care for their clergy: defending their rights and ensuring that they fulfill their obligations; providing them the means for their spiritual and intellectual development; and providing them the necessary care for their material needs.

Each of these points comes from one or more of the canons of chapter III, title III, particular I, book II of the Code: "The Obligations and Rights of Clerics."[2] The obligations are indicated in canons 273–277, and they refer in particular to obedience and cooperation with the bishop in the pastoral duties and their own sanctity of life. Among the rights we can note the right to obtain—except those who do not possess the respective power of orders and of ecclesiastical governance—the offices required for the exercise of said powers (c. 274 § 1), and the right to associate with other clerics in order to achieve the purposes befitting the clerical state (c. 278).[3]

The bishop must provide for the spiritual and intellectual needs of the presbyters, ensuring them the means indicated in canon 279.

With respect to the material needs of the persons serving the Church, the bishop must provide the clerics salaries commensurate with their rank, office and circumstances, "such that it provides for the necessities of their life and for the just remuneration of those whose services they need" (c. 281 § 1).[4] The mention of the different ranks and circumstances of each of the clerics takes into account the demands of just distribution that at the beginning, in the development phase of the Code, seemed to be favoring over-egalitarianism, which was wisely abandoned in the final wording of the norm.[5] As for the rest, as also established as an obligation of the bishop in canon 384, presbyters must be ensured necessary social welfare, which is also indicated in the Code, to provide "as they may need in infirmity, sickness or old age" (c. 281 § 2).[6]

In short, canon law has set forth the extensive series of precepts that were included in *Directory on the Pastoral Ministry of Bishops* 107–117, which discuss, with the detail characteristic of that document, the relationship between the bishop and the diocesan clergy.

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2. Cf. T. RINCÓN-PÉREZ, commentary on book I, part I, title III, chapter III: "The Obligations and Rights of Clerics," in *Pamplona Com.*
3. Cf. A. DE LA HERA, "El derecho de asociación de los clérigos y sus limitaciones," in *Ius canonicum* 23 (1983), pp. 171–197.
4. Cf. J. DE OTADUY, *Régimen jurídico español del trabajo de eclesiásticos y de religiosos* (Madrid 1993), pp. 34–39.
5. Cf. T. RINCÓN-PÉREZ, commentary on c. 281, in *Pamplona Com.*
6. Cf. DE OTADUY, *Régimen jurídico*, pp. 39–41.

385 Episcopus dioecesanus vocationes ad diversa ministeria et ad vitam consecratam quam maxime foveat, speciali cura vocationibus sacerdotalibus et missionalibus adhibita.

The diocesan Bishop must in a very special way foster vocations to the various ministries and to consecrated life, having a special care for priestly and missionary vocations.

SOURCES: *LG* 27; *CD* 15; *OT* 2; *AG* 20; *DPMB* 118–119, 197; *MR* 38–39

CROSS REFERENCES: c. 233

COMMENTARY

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The need to foster vocations in the Church constitutes a constant pastoral concern of the hierarchy, shared by priests and the people. Although to a very limited degree, canon 1353 of the 1917 Code already discussed this subject, recommending that priests, especially parish priests, foster priestly vocations, mainly among boys showing signs of attraction for that kind of life. Later, Pius XII, in the motu proprio *Cum nobis* of November 4, 1941[1] created the Pontifical Work for Priestly Vocations, in view of a new reality of a world increasingly in need of priests (cf. *OT* 2).

From that time on, the gradual decrease in the number of vocations was of more and more concern to the Church, and several pontiffs have dedicated particular attention to the matter: Pius XII, Apostolic Exhortation *Mentis nostrae* (1950); John XXIII, *Address to the First International Congress on Vocations for the States of Perfection* (1961); and Paul VI, Apostolic Letter *Summi Dei Verbum* (1963). In short, Vatican II dedicated the Decree *Optatam totius* to priestly formation, with particular emphasis on the matter of fostering and caring for vocations. Canon 233 of the Code, which discusses this matter, constitutes a summary of *Optatam totius* 2 and establishes that "diocesan bishops, who must show the greatest concern to promote vocations, are to instruct the people entrusted to them on the importance of the sacred ministry and the need for ministers in the Church. They are to encourage and support initiatives to promote vocations, especially works established for this purpose."

1. *AAS* 33 (1941), p. 479.

Canon 385 briefly and concisely reiterates this mandate that the legislator directs to diocesan bishops, including, in the duty of these bishops to foster vocations, all aspects of dedication to the sacred ministry: priestly, missionary and religious vocations. In an expression as condensed as this canon, a concrete norm is set forth, with which diocesan bishops must comply, which summarizes the detailed statement made regarding this duty of pastors in the *Directory on the Pastoral Ministry of Bishops* 197, which discusses in detail the fostering, especially through diocesan works for vocations (parallel on the diocesan level to the Pontifical Work for Priestly Vocations created by Pius XII in 1941, which still is found in the Congregation for Catholic Education), on priestly and diaconate vocations, religious vocations of both sexes, and vocations of consecrated laity to ecclesial service.

386 **§ 1. Veritates fidei credendas et moribus applicandas Episcopus dioecesanus fidelibus proponere et illustrare tenetur, per se ipse frequenter praedicans; curet etiam ut praescripta canonum de ministerio verbi, de homilia praesertim et catechetica institutione sedulo serventur, ita ut universa doctrina christiana omnibus tradatur.**

§ 2. Integritatem et unitatem fidei credendae mediis, quae aptiora videantur, firmiter tueatur, iustam tamen libertatem agnoscens in veritatibus ulterius perscrutandis.

§ 1. The diocesan Bishop is bound to teach and illustrate to the faithful the truths of faith which are to be believed and applied to behaviour. He is himself to preach frequently. He is also to ensure that the provisions of the canons on the ministry of the word, especially on the homily and catechetical instruction, are faithfully observed, so that the whole of Christian teaching is transmitted to all.

§ 2. By whatever means seem most appropriate, he is firmly to defend the integrity and unity of the faith to be believed. However, he is to acknowledge a just freedom in the further investigation of truths.

SOURCES: § 1: cc. 336 § 2, 1327 § 1; Benedictus PP. XV, Enc. Humani generis, 15 Jun. 1917 (*AAS* 9 [1917] 305–317); SCCong Normae, 28 Jun. 1917 (*AAS* 9 [1917] 328–334) Pius PP. XII, Alloc., 31 May 1954 (*AAS* 46 [1954] 314–315; *LG* 25; *CD* 13, 14; *DPMB* 55–65
§ 2: c. 336 § 2; *LG* 23; *GE* 10; *GS* 62; *DPMB* 63, 65, 75

CROSS REFERENCES: cc. 762–780, 793ff, 806, 823, 882, 1366, 1369, 1371

COMMENTARY

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1. This canon follows what is a pastoral approach regarding recommendations the Code makes to diocesan bishops. He is to do this for the faithful entrusted to him through exhortations, council and care. Moreover this canon emphasizes the serious juridic duty of pastors to comply in whatever way possible with the laws concerning the acts of governance and the hierarchy.

Doctrine[1] has discussed at length the thesis of the three powers in the Church—order, jurisdiction, and magisterium—and especially the exact nature of the latter, a power distinct from the other two, or that is a part of one of them, especially the power of jurisdiction.[2] In any event, without going into a scientific discussion, we can see how it is evident that "throughout the whole of the 1983 Code, the ministries of teaching, sanctifying, and governing are not separate areas, but are continually overlapping for the fulfillment of a single mission: that of discharging the priesthood of Christ."[3]

Canon 386 focuses on the pastoral exercise by diocesan bishops of the power of magisterium. Several other canons in different parts of the Code refer to this power. In particular, the introduction in the supreme body of law in all of book III, concerning "The Teaching Office of the Church" (which in the 1917 Code only was a part of the section, the fourth part of book III "*De rebus*") is ample testimony to the importance that the legislator today places on the exercise of the ecclesiastical magisterium. Thus the importance of the canon that specifies for the diocese this power entrusted to the bishop, and with him the priests, catechists, teachers and scholars, in whose work the unity of faith and the freedom in investigation and exposition of revealed truth must also shine.

2. In the first place, the canon proclaims the personal duty of the bishop to exercise the magisterium on his own, teaching and explaining to the faithful the truths of faith that must be believed and lived, that is, the doctrine of the Church regarding faith and morals. According to Vatican II, "By preaching everywhere the Gospel, welcomed and received under the influence of the Holy Spirit by those who hear it, the apostles gather together the universal Church" (*LG* 19); "in that way, then, with priests and deacons as helpers, the bishops received the charge of the community, presiding in God's stead over the flock of which they are the shepherds in that they are teachers of doctrine ..." (*LG* 20).

In the exercise of this duty to teach, canon 386 recommends that the diocesan bishop personally preach often, and that he ensure compliance with the canons covering the ministry of the word, especially on the homily and catechetical instruction. The two chapters of title I, "The Ministry

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1. Cf. CONGAR, *Santa Iglesia*, pp. 183–213; J. HERVADA, *Elementos de derecho constitucional canónico* (Pamplona 1987), pp. 235–250; A. DE LA HUERGA, "La Iglesia de la caridad y la Iglesia del derecho," in *La potestad en la Iglesia* (Barcelona 1960), pp. 31–40.

2. Cf. J.A. FUENTES ALONSO, "La función de enseñar," in *Manual de derecho canónico*, 2nd ed. (Pamplona 1991), pp. 427–458; J.L. SANTOS, "La función de enseñar, en la parroquia," in J. MANZANARES–A. MOSTAZA–J.L. SANTOS, *Nuevo derecho parroquial* (Madrid 1988), pp. 87–91; A. MOSTAZA, "Regulación del culto divino y del magisterio eclesiástico," in *Derecho canónico* (Pamplona 1975), pp. 370–376; E. LABANDEIRA, *Tratado de derecho administrativo canónico*, updated 2nd ed. (Pamplona 1993), pp. 68–75.

3. J.L. GUTIÉRREZ, commentary on c. 386, in *Pamplona Com.*

of the Divine Word," of book III of the Code establish the norms that, according to canon 386, the diocesan bishop must carry out in this area, namely, chapter I, canons 762–772, which discusses "Preaching the word of God," and chapter II, canons 773–80, on "Catechetical Formation." While canon 773 indicates that "it is pastors of souls especially who have the serious duty of attending to the catechesis of the Christian people," the new Catechism of the Catholic Church in turn states that "the task of giving an authentic interpretation of the word of God, whether in its written form or in the form of Tradition, has been entrusted to the living teaching office of the Church alone. Its authority in this matter is exercised in the name of Jesus Christ. This means that the task of interpretation has been entrusted to the bishops in communion with the successor of Peter, the Bishop of Rome" (no. 85).

To this we can add Catholic education in educational institutions (cc. 793ff) and the use of the means of social communication (c. 822).[4]

3. While the magisterial duty of the bishop obligates him to preach and to foster preaching, paragraph two of the canon sets forth a duty without which this latter obligation could even be prejudicial to its own objectives because the relationship between preaching and authentic teaching of the faith would be uncontrolled, and, in turn, the right of the faithful to receive the truth would be thwarted.[5] The canon recommends that bishops defend the integrity and unity of the faith and, at the same time, respect freedom in investigation of the truth.[6] The Code offers the diocesan pastor the means to be able to maintain those essential values in his diocese. Thus, canon 806 grants the diocesan bishop competence over Catholic schools, which he must watch over and visit precisely in order to comply with the provisions of canon 386 § 2.[7] Canon 823 entrusts him with the duty and grants him the right to demand that the faithful submit to his judgment regarding writings on faith and morals, and he must condemn those that in that area are harmful.[8] It should be noted that it is not simply, in both situations—schools and books—a matter of the authority to condemn morally, but rather an actual right that seriously obligates the bishop to put it into practice and the faithful to submit to the respective decisions

4. Cf. J.A. FUENTES ALONSO, "La función de enseñar," in *Manual de derecho canónico*, cit., pp. 454–457.

5. Cf. C.J. ERRÁZURIZ M., *Il 'munus docendi Ecclesiae': diritti e doveri dei fedeli* (Milan 1991), pp. 17–76. Regarding the rights of the faithful in the Church, cf. J. HERVADA, *Elementos de derecho constitucional canónico* (Pamplona 1987), ch. IV.

6. Cf. HERVADA, ibid., pp. 140–143; ERRÁZURIZ, ibid., pp. 166–182.

7. Cf. J.A. FUENTES ALONSO, "La función de enseñar," in *Manual de derecho canónico*, cit., pp. 451–452.

8. Ibid., pp. 434–435.

of the bishops. Book VI of the Code, "Sanctions in the Church," does not fail to indicate delicts defined as handing over one's children to be brought up in a non-Catholic religion (c. 1366) or blasphemy through the means of social communication (c. 1369), as well as teaching doctrine condemned by the Church (c. 1371). In the latter case, it expressly provides that the bishop must warn the guilty party and punish him if he does not retract.[9]

9. Regarding the relationship between the magisterium and the liberty of the faithful to receive, deepen, and diffuse the word of God, cf. ERRÁZURIZ., *Il 'munus docendi Ecclesiae,' passim*; FUENTES ALONSO, "La función de enseñar," pp. 434–435.

387 **Episcopus dioecesanus, cum memor sit se obligatione teneri exemplum sanctitatis praebendi in caritate, humilitate et vitae simplicitate, omni ope promovere studeat sanctitatem christifidelium secundum uniuscuiusque propriam vocationem atque, cum sit praecipuus mysteriorum Dei dispensator, iugiter annitatur ut christifideles suae curae commissi sacramentorum celebratione in gratia crescant utque paschale mysterium cognoscant et vivant.**

Mindful that he is bound to give an example of holiness in charity, humility and simplicity of life, the diocesan Bishop is to seek in every way to promote the holiness of Christ's faithful according to the proper vocation of each. Since he is the principal dispenser of the mysteries of God, he is to strive constantly that Christ's faithful entrusted to his care may grow in grace through the celebration of the sacraments, and may know and live the paschal mystery.

SOURCES: *LG* 26, 27, 41; *CD* 15, 16; *DPMB* 21–23, 28

CROSS REFERENCES: cc. 210, 369, 375 § 1

COMMENTARY

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The canon briefly emphasizes the duty of the bishop to exercise the sanctifying office in his diocese, "since he is," according to the single paragraph of the canon, "the principal dispenser of the mysteries of God." In *Christus Dominus* 15, we find the same expressions more extensively developed that has the same content of this canon: "In exercising their mission of sanctification bishops should be mindful of the fact that they have been chosen from among men and made their representatives before God to offer gifts and sacrifices in expiation of sins." "They should therefore see to it that the faithful know and live the paschal mystery more deeply through the Eucharist, forming one closely-knit body, united by the charity of Christ." "As spiritual guides of their flocks, bishops should be zealous in promoting the sanctity of their clergy, their religious and their laity according to the vocation of each individual, remembering that they are under an obligation to give an example of sanctity in charity, humility and simplicity of life."

The Code has accepted and repeated these words, precisely outlining the sanctifying office of the Church:[1] the bishop shall give an example of holiness in order to promote the holiness of his faithful. This holiness shall be achieved and lived by each according to his or her personal vocation; spiritual life revolves around the sacraments, vehicles of grace; the center of which is the paschal mystery.[2] Christ sent the apostles that "the work of salvation ... should be set in train through the sacrifice and sacraments, around which the entire liturgical life revolves" (*SC* 6).[3]

Each of these statements in turn also has support in other texts of the Code. As indicated in canon 369, the portion of the people of God that is the diocese is "close to its pastor and gathered by him through the Gospel and the Eucharist in the Holy Spirit."[4] For their part, "bishops ... are to be the teachers of doctrine, the priests of sacred worship" (c. 375 § 1).[5] The faithful "are called, each according to his or her particular condition, to exercise the mission which God entrusted to the Church to fulfill in the world" (c. 204 § 1).[6] "All the faithful, each according to his or her own condition, must make a wholehearted effort to lead a holy life" (c. 210).[7] "The most august sacrament is the holy Eucharist, in which Christ the Lord himself is contained, offered and received" (c. 897).[8] "The faithful are to hold the holy Eucharist in the highest honor. They should take an active part in the celebration of the most august Sacrifice ..." (c. 898).[9]

Thus, canon 387 is a summary of the Church's doctrine on the vocation of the faithful to holiness, and the means for achieving it, applied to the episcopal exercise of the sanctifying office within the diocese.

1. Cf. regarding the sanctifying function of the Church, T. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," in *Manual de derecho canónico*, 2nd ed. (Pamplona 1991), pp. 463–465.
2. Cf. J. MANZANARES, "Función de santificar," in J. MANZANARES-A. MOSTAZA-J.L. SANTOS, *Nuevo derecho parroquial* (Madrid 1988), p. 113.
3. Cf. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," pp. 461–463.
4. Cf. ibid., p. 464.
5. Cf. R. JULIÁN REY, *El obispo diocesano en la génesis de la "Lumen Gentium"* (Pamplona 1977), p. 89.
6. Cf. J. HERVADA, *Elementos de derecho constitucional canónico* (Pamplona 1987), pp. 95–96.
7. Cf. ibid., p. 96.
8. Cf. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," p. 496.
9. Cf. J. MANZANARES, "Eucaristía," in J. MANZANARES-A. MOSTAZA-J.L. SANTOS, *Nuevo derecho parroquial* (Madrid 1988), pp. 177–178 and 193–195.

388 **§ 1. Episcopus dioecesanus, post captam dioecesis possessionem, debet singulis diebus dominicis aliisque diebus festis de praecepto in sua regione Missam pro populo sibi commisso applicare.**

§ 2. Episcopus Missam pro populo diebus, die quibus in § 1, per se ipse celebrare et applicare debet; si vero ab hac celebratione legitime impediatur, iisdem diebus per alium, vel aliis diebus per se ipse applicet.

§ 3. Episcopus cui praeter propriam dioecesim aliae, titulo etiam administrationis, sunt commissae, obligationi satisfacit unam Missam pro universo populo sibi commisso applicando.

§ 4. Episcopus qui obligationi, de qua in §§ 1–3, non satisfecerit, quam primum pro populo tot Missas applicet quot omiserit.

§ 1. After he has taken possession of the diocese, the diocesan Bishop must apply the Mass for the people entrusted to him on each Sunday and on each holyday of obligation in his region.

§ 2. The Bishop must himself celebrate and apply the Mass for the people on the days mentioned in § 1; if, however, he is lawfully impeded from so doing, he is to have someone else do so on those days, or do so himself on other days.

§ 3. A Bishop who, in addition to his own, is given another diocese, even as administrator, satisfies the obligation by applying one Mass for all the people entrusted to him.

§ 4. A Bishop who has not satisfied the obligation mentioned in §§ 1–3, is to apply as soon as possible as many Masses for the people as he has omitted.

SOURCES: § 1: c. 339 § 1; Paulus PP. VI, mp *Mysterii Paschalis*, 14 feb. 1969 (*AAS* 61 [1969] 222–226); SCC Decr. *Litteris Apostolicis*, 25 iul. 1970
§ 2: c. 339 § 4
§ 3: c. 339 § 5
§ 4: c. 339 § 6

CROSS REFERENCES: c. 897

COMMENTARY

Alberto de la Hera

Canon 388 specifies one of the duties of the diocesan bishop, related to his sanctifying office with regard to the diocese. The preceding canon already indicated his obligation to promote with all his might the holiness of his faithful. In connection with all this, he is reminded that he must favor the participation of the faithful in the sacraments, especially the Eucharist.

In accordance with this norm of canon 387, canon 388 imposes on the bishop the special duty to seek the holiness of his faithful by offering Holy Mass for them. In fact, in the words of the Code, it "is the summit and the source of all worship and Christian life. By means of it the unity of God's people is signified and brought about" (c. 897). The diocesan bishop, inasmuch as he has the duty to promote and foster the unity and holiness of Christian life, possesses an obligation inherent to his office with respect to the people of God entrusted to him, such that these people directly benefit by the celebration of the Eucharist by the pastor of the diocese. Since he is responsible to God for the diocese, the bishop must put all his faithful on the altar before the eyes of Christ, imploring for all the graces that through Holy Sacrifice are shed over the Church. This is not in vain, as the Council notes, "The bishop is to be considered as the High Priest of his flock from whom the life in Christ of his faithful is in some way derived and upon whom it in some way depends" (*SC* 41).

One can infer from this same legal text that the duty indicated for the bishop in canon 388, that he celebrate Mass for his people on holy days, is not a mere recommendation or pious exhortation, but an unavoidable obligation. This, in fact, consists of the norm to apply for the people of the diocese—as many as are entrusted to the bishop as a whole—Mass every Sunday and holy day of obligation in the diocese. Once the norm is established, the rest of the canon makes it clear that it is an unavoidable duty, inasmuch as the text is designed to foresee all possible contingencies that may prevent compliance with the precept and to indicate alternative ways of compliance, so that this provision will absolutely under no circumstances fail to be complied with. Doctrine, when considering if priests have the obligation to celebrate the Holy Mass daily or frequently, in connection with the exhortation to this effect in canon 904, points out that "a true obligation may arise for other reasons: by reason of an office entailing the care of souls, for the 'missa pro populo' (cf. cc. 388 and 534) as

well as for the need to celebrate it 'as frequently as necessary to attend to his ministry'."[1]

This is a matter of a duty of the bishop that is impossible to control externally. No person, and consequently no authority, neither in the external forum nor in the internal forum, can determine whether the bishop has offered Mass for the people, unless it is done audibly (and even in that case the problem of not knowing the true intentions of the celebrant could arise). The bishop himself is the only authentic testimony of his obedience to the norm. As a result, non-compliance with canon 388 is practically not punishable in the external forum, and the bishop will be the one to answer to God for his conduct. The proper culpability in the internal forum admitted by the prelate before the confessor would lack external effects. That is precisely why, apart from possible sin and its absolution and appropriate penitence—all matters for the internal forum—the legislator has provided in canon 388 that any bishop who has not applied the Mass for the people when he should do so continues to have the duty to apply as many masses as he has omitted. This evidences the importance given to the benefit that the people have the right to expect that the Holy Mass be offered for them, which is the principal source of Christian life.

1. J. MANZANARES, "Eucaristía," in J. MANZANARES-A. MOSTAZA-J.L. SANTOS, *Nuevo derecho parroquial* (Madrid 1988), p. 182.

389 **Frequenter praesit in ecclesia cathedrali aliave ecclesia suae dioecesis sanctissimae Eucharistiae celebrationi, in festis praesertim de praecepto aliisque sollemnitatibus.**

He is frequently to preside at the celebration of the most holy Eucharist in the cathedral Church or in some other Church of his diocese, especially on holydays of obligation and on other solemnities.

SOURCES: *SC* 41; *LG* 26; *DPMB* 81; *EMys* 7, 42

CROSS REFERENCES: cc. 369, 386, 899 § 2, 1217 § 2

COMMENTARY

Alberto de la Hera

For many reasons, the cathedral church is the main church of the diocese, in a way the mother and major center of diocesan liturgical life. Canon 1217 § 2 provides for a special solemnity in its dedication. It is the suitable location for the taking possession of the see by the diocesan bishop (c. 382). The cathedral chapter possesses a unique role and a particular task in the diocese.[1] These facts, which are proof of the dignity of the cathedral church, are valued by an ancient tradition of the universal Church, the manifestations of which are not only juridical and liturgical, but also artistic, and constitute one of the elements that shapes Christianity.

Therefore, there is no particular reason behind the legislator's recommendation that the diocesan bishop (grammatically c. 389 does not have a subject for this obligation, but there can be no doubt about to whom it refers) use his cathedral for such a special act in the life of the diocese as the pastor celebrating Mass, especially on those days that he has an obligation to also offer Mass for his people.

The Code also includes the provision of Vatican II in the Constitution on the Sacred Liturgy: "Therefore, all should hold in the greatest esteem the liturgical life of the diocese centered around the bishop, especially in the cathedral church" (*SC* 41).

Nonetheless, the canon does not limit this exhortation or mandate of the legislator—celebration of Holy Mass by the bishop before the people

1. Cf. the title "El cabildo catedral," in J.L. GUTIÉRREZ, "Organización jerárquica de la Iglesia," in *Manual de derecho canónico*, 2nd ed. (Pamplona 1991), pp. 395–397.

in the principal liturgical solemnities—to the cathedral Church. In many cases, geographical, social, demographic or other circumstances would make it difficult for many of the faithful of the entire diocese to attend at the cathedral. In other cases, the feast of the day related to a saint or given devotion may be the object of worship in other churches.[2]

Consequently, the bishop must celebrate Mass publicly and often, on days of obligation and other solemnities. This is the first aspect of the duty that canon 389 indicates. In the second place, it is at his discretion and depends on his knowledge of the needs of the diocese whether to do it in the cathedral or, when he deems it preferable, in other churches in his diocese (cf. *DPMB* 81).

2. Regarding the various classes of churches and Eucharistic adoration therein, cf. T. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," in *Manual de derecho canónico*, 2nd ed. (Pamplona 1991), pp. 593–596.

390 **Episcopus dioecesanus in universa sua dioecesi pontificalia exercere potest; non vero extra propriam dioecesim sine expresso vel saltem rationabiliter praesumpto Ordinarii loci consensu.**

The diocesan Bishop may carry out pontifical functions throughout his diocese. He may not do so outside his diocese without the consent of the local Ordinary, either expressly given or at least reasonably presumed.

SOURCES: c. 337 § 1; PAULUS PP. VI, Instr. *Pontificales ritus*, 21 Jun. 1968 (*AAS* 60 [1968] 406–412); *DPMB* 81

CROSS REFERENCES: cc. 134 § 2, 369, 386, 899 § 2

COMMENTARY

Alberto de la Hera

Neither this canon nor any other part of the Code defines or determines what should be understood as pontifical functions. Canon 2 expressly provides that the Code does not normally determine liturgical rites, while for their part current liturgical laws remain in force. Therefore, we must refer to these laws in a commentary on a canon discussing a subject in which a liturgical matter and a jurisdictional matter are present at the same time. Therefore, for the purposes of the celebration of pontifical functions, other basic liturgical documents, such as the motu proprio *Pontificalia insignia* of June 21, 1968 and the Instruction *Pontificales ritus* of the Sacred Congregation for Rites of the same date must be kept in mind.

However, Vatican II has clearly described the substantial, theological and liturgical content of the pontifical celebration of the Eucharist by the bishop: "The principal manifestation of the Church consists in the full, active participation of all God's holy people in the same liturgical celebrations, especially in the same Eucharist, in one prayer, at one altar, at which the bishop presides, surrounded by his presbyterium and by his ministers" (*SC* 41).

This type of celebration clearly has only one meaning, at least normally, in the diocese that each bishop governs. It is therein, usually in his cathedral church, surrounded by his priests and his people, where the diocesan prelate will celebrate pontifical functions in order that these functions will have the deep meaning that the aforementioned conciliar text attributes to them.

On the other hand, the celebration of a pontifical function, on the part of the diocesan bishop, entails something more than normal presiding over the celebration of the Eucharist on the part of the celebrating priest. In this celebration, in the eucharistic assembly, the bishop or the presbyter act in the person of Christ, presiding over the community of the faithful (c. 899 § 2). In the celebration described in canon 390, the bishop presides with particular solemnity in the exercise of his function as "high priest of his flock" (*SC* 41) and thus also manifests his office as the teacher and minister of governance. He possesses all this in its full sense, in fact, in the diocese of which he is the head.

The legislator does not prohibit the diocesan bishop in any way from the celebration of pontifical functions outside of his diocese. Of course, the legal text does not discuss other minor, even eucharistic, ceremonies that the bishop may celebrate outside the boundaries of his territory. The reference is to this liturgical function that, by having the meaning we attribute to it, loses in a certain way its raison d'être when the bishop is not surrounded by his people, his presbyterate and his ministers.

Nonetheless, the celebration of pontifical functions outside the diocesan boundaries could be justified for many different reasons, for example, on the occasion of pilgrimages in which a portion of his own people and presbyterate accompany him, or when the bishop is called to preside over the celebration of a solemn festivity, for example, in its city of origin, or for any other reasons that would not need to be mentioned. In such cases, the Code requires that the bishop obtain the express or reasonably understood consent of the local ordinary in which the ceremony he is to preside over will take place.

Thus it is within the discretion of the local diocesan authority to decide the advisability of holding a liturgical celebration at which it would devolve upon him to preside pursuant to conciliar provisions and those of the Code, and which would, on the other hand, be presided over by the pastor of the other diocese.

391 **§ 1. Episcopi dioecesani est Ecclesiam particularem sibi commissam cum potestate legislativa, exsecutiva et iudiciali regere, ad normam iuris.**

§ 2. Potestatem legislativam exercet ipse Episcopus; potestatem exsecutivam exercet sive per se sive per Vicarios generales aut episcopales ad normam iuris; potestatem iudicialem sive per se sive per Vicarium iudicialem et iudices ad normam iuris.

§ 1. The diocesan Bishop governs the particular Church entrusted to him with legislative, executive and judicial power, in accordance with the law.

§ 2. The Bishop exercises legislative power himself. He exercises executive power either personally or through Vicars general or episcopal Vicars, in accordance with the law. He exercises judicial power either personally or through a judicial Vicar and judges, in accordance with the law.

SOURCES: § 1: c. 335 § 1; SCCouncil Resol., 19 feb. 1921 (*AAS* 13 [1921] 228–230); Signatura Decisio, 15 dec. 1923 (*AAS* 16 [1924] 105–112); Pius PP. XII, Enc. *Mystici Corporis*, 29 iun. 1943 (*AAS* 35 [1943] 211–212); *LG* 27; *DPMB* 32–38
§ 2: cc. 362, 366 § 1, 368, 369, 1572, 1573; *CD* 27; COMMISSIO CENTRALIS COORDINANDIS POST CONCILIUM LABORIBUS ET CONCILII DECRETIS INTERPRETANDIS Resp., 10 iun. 1966 (*AAS* 60 [1968] 361); *ES* I, 14 § 2

CROSS REFERENCES: cc. 129, 131, 134 § 3, 135, 375, 381 § 1, 406–407, 445–446, 455, 466, 472–476, 479, 1419, 1421, 1423

COMMENTARY

Valentín Gómez-Iglesias C.

1. *Office of governance and power of jurisdiction of the diocesan bishop*

a) Canon 391, within the article on diocesan bishops, introduces a series of canons referring to the scope of the office of governance and, to be precise, within that sphere, to that specific manner of governance which consists of exercising power of governance or of jurisdiction (cf. c. 129). Before going into the particular aspects presented by the canon, it seems

appropriate to set the office of governance and the power of jurisdiction into the broadest framework of the *munus pastorale* of the diocesan bishop.

"That office, however, which the Lord committed to the pastors of his people, is, in the strict sense of the term, a service, which is called very expressively in Sacred Scripture a *diakonia* or ministry" (*LG* 24).[1] To be precise, the service or ministry that devolves upon the bishops is to be "teachers of doctrine, ministers of sacred worship and holders of office in government" (*LG* 20; cf. c. 375 § 1). Even more specifically, the service or ministry of the diocesan bishop—his *munus pastorale*—consists of that triple function of teaching, sanctifying and governing the particular church entrusted to him as the Vicar and legate of Christ (cf. *LG* 25–27).[2]

The diocesan bishop's office of ruling or governing has various manifestations ranging from "counsel, exhortations and examples" to "sacred power" (*LG* 27). This power is referred to in canon 381, the first article discussing diocesan bishops, stating that upon these bishops in their dioceses devolves "all the ordinary, proper and immediate power required for the exercise of his pastoral office, except in those matters which the law or a decree of the Supreme Pontiff reserves to the supreme or to some other ecclesiastical authority" (cf. *LG* 27). Canon 382 indicates at which time the diocesan bishop begins to exercise the rights and obligations of his office. In turn, canons 383–390 contain a series of counsels, exhortations and guidance for the diocesan bishop for the best performance of his episcopal ministry, which are situated on the other hand within the scope of the offices of teaching and sanctifying (cf. c. 383). Unlike these canons, canon 391, with clear technico–juridical language and in basic accordance with canon 381, contains a specification and statement of the content and exercise of the proper, immediate and ordinary power of the diocesan bishop: "The diocesan bishop governs the particular church entrusted to him with legislative, executive and judicial power, in accordance with the law" (cf. *LG* 27).

b) In the doctrine and legislation prior to Vatican II, the episcopal ministry was seen mostly in the light of the function of governing and, more specifically, of the power of jurisdiction, while the function of teaching and sanctifying remained somewhat in the background.

1. Cf. V. GÓMEZ-IGLESIAS C., "Acerca de la autoridad como servicio en la Iglesia," in PCILT, *Ius in vita et in missione Ecclesiae* (Vatican City 1994), pp. 193–217.

2. Cf. J. LÉCUYER, "Il triplice ufficio del vescovo," in G. BARAÚNA, *La Chiesa del Vaticano II* (Florence 1965), pp. 851–871; U. BETTI, *La dottrina sull'episcopato del Concilio Vaticano II: il capitolo II della costituzione dommatica "Lumen Gentium"* (Rome 1984); P. GOYRET, *El "munus regendi" de los obispos respecto a las Iglesias particulares en "Lumen Gentium," 27* (Rome 1990).

As a result of a recent revitalization of the awareness of the mission of authority in the Church as a ministry, as service,[3] there began to be more of an insistence on the pastoral nature of the episcopal ministry in its three dimensions of teaching, sanctifying and ruling or governing.[4] Thus canon 391 is preceded by other canons referring rather to the scopes of the offices of teaching and of sanctifying. At the same time, there is danger in theory, and especially in practice, of undervaluing the office of ruling and more specifically the exercise of the power of governance or jurisdiction as if it were not a very pastoral dimension of the episcopal ministry, as if the best service consisted of dispensing with the exercise of power and almost exclusively resorting to "counsel, exhortations and example," with the serious risk of setting service up against power.[5] The recent magisterium has nipped this risk in the bud, reaffirming the strictly pastoral nature of the function of governance and specifically, the exercise of power.[6] Canon 391 contemplates precisely the power of governance or jurisdiction as a means through which the bishop governs the diocese.

Naturally, it cannot be forgotten that the bishop also governs with non-binding means (counsel, exhortations) and, in a broad sense, with his entire life and activity as pastor (cf. *LG* 27; c. 387). Still, it is worth emphasizing the need for the exercise of power and especially in its traditional manifestations that entail a clear juridical need for the activities: legislation (laws), judgment (processes, sentences, sanctions), and administration (decrees, precepts, etc.). If the bishops should dispense with the exercise of the power to legislate, execute or administer, and judge, referred to in canon 391 § 1, they would not be able to render their unique service and be effective in other aspects (counsel, exhortations, example) of the content of the office of governance of which the exercise of power constitutes a necessary, irreplaceable complement.[7] Because of the intimate relationship, internal connection, and reciprocal manifestation that takes place between the triple *munera*,[8] they would not properly and effectively exercise the function of teaching and sanctifying,[9] nor would

3. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia*, 1st ed. (Pamplona 1969), pp. 82–85; 90–101; 116–123.

4. Cf. J. HERVADA, *Elementos de derecho constitucional canónico* (Pamplona 1987), pp. 237–250; J.I. ARRIETA, art. "Vescovi," in *Enciclopedia giuridica*, v. 32 (Rome 1994).

5. Regarding this risk, cf. C.J. ERRÁZURIZ M., *Riflessioni circa il rapporto tra diritto e pastorale nella Chiesa*, in D.J. ANDRÉS GUETIÉRREZ, ed., *Vitam impendere magisterio* (Vatican City 1993), pp. 297–230.

6. Cf. JOHN PAUL II, *Allocution to the Roman Rota*, January 18, 1990, no. 3, in *AAS* 82 (1990), pp. 872–877; idem, *Alocución a los participantes en un simposio internacional de derecho canónico*, April 23, 1993, no. 6, in *Comm.* 25 (1993), pp. 12–16.

7. G. PHILIPS, *L'Église et son mystère au deuxième Concile du Vatican*, I (Paris 1967), pp. 351–353.

8. JOHN PAUL II, Ap. Let. *Novo incipiente*, April 8, 1979, no. 3, in *AAS* 71 (1979), p. 397; also cf. K. WOJTYLA, *La renovación en sus fuentes* (Madrid 1982), p. 178.

9. BETTI, *La dottrina*, p. 437; GOYRET, *El "munus regendi,"* pp. 324, 359.

they be complying with a grave duty: "In virtue of this power bishops have a sacred right and a duty before the Lord of legislating for and of passing judgment on their subjects, as well as of regulating everything that concerns the good order of divine worship and of the apostolate" (*LG* 27). It is a right-duty because that unique way of serving that is serving with power is rightly owing to the Church and to the faithful and Vatican II does not hesitate to describe it as sacred.

This exercise of the power of governance must go hand in hand with constant care for the good of the diocese and will have many manifestations and channels that are not strictly juridical. However, the absence of exercise on the part of the bishop of that "sacred right-duty" to govern with the legislative, executive or administrative, and judicial power the diocese entrusted would leave that portion of the people of God without a visible unifying discipline and would cause serious harm to the "*communio in regimine*" that is a necessary part of the ecclesial communion. In this framework, we should also stress the need to recover the very traditional role of the diocesan legislation that devolves upon the diocesan synod (cf. cc. 460–468).

2. *Unity, distinction, and partial separation of the power of governance or of jurisdiction of the diocesan bishop*

a) We already referred previously to the clear technico-juridical language of canon 391. For a correct interpretation and application of its content, it seems necessary to place it within the context of the unity of power and distinction of functions in the Code.

In number seven of the Principles, clear reference was made to the distinction of functions: "the various functions of ecclesiastical power should be clearly distinguished, that is, the legislative, administrative, and the judicial functions, and it should be adequately determined through which organs each of these functions is to be exercised." It is not only a matter of establishing the competent organs, but also of regulating the procedures for each type of act (legislative, administrative and judicial), all within the context of effective juridical protection of superiors as well as of subjects, to protect the exercise of ecclesiastical power from the least suspicion of arbitrariness,[10] and avoid the frequent instances of juridical insecurity.[11] In short, it was a more complete application of the law of the Church concerning the technical distinction of functions that, de-

10. E. LABANDEIRA, "La distinción de poderes y la potestad ejecutiva," in *Ius canonicum* 28 (1988), pp. 91–93. Regarding this topic, cf. the studies published in *Ius canonicum* (Pamplona 1993), pp. 143–170, 243–259, 494–497.

11. V. GÓMEZ-IGLESIAS C., "La 'aprobación específica' en la 'Pastor Bonus' y la seguridad juridical," in *Fidelium iura* 3 (1993), pp. 362–374.

parting from the unique nature of ecclesiastical power, would not be a mere transposition to the Church of the liberal-enlightenment doctrine concerning the division of powers.[12] In this sense, number six of the Principles reaffirmed the constitutional unity of ecclesiastical power and its primary personal character. At the same time, it warned that these unique characteristics of *sacra potestas* did not justify its arbitrary exercise given that arbitrariness is prohibited by natural divine law, by positive divine law, and by the same ecclesiastical law.

The requirements of Principle six and seven were not an easy task, but it can be stated that the legislator of the canons performed "a delicate work of doctrinal and technico-juridical synthesis" in trying to harmonize "respect for the peculiar nature of ecclesiastical power and the need to prevent the sacramental origin and personal holder of this power from constituting an excuse for ignoring certain progress in juridical science and Christian anthropology."[13] In fact, the Code generally consecrated the distinction of functions in the exercise of ecclesiastical power in canon 135 § 1 which stated in clear terms that "the power of governance is divided into legislative, executive and judicial power," while subsequent paragraphs contain general provisions for the exercise—always "*modo iure praescripto*"—of different powers. In turn, canon 391 sanctions the distinction of functions in the particular church, at the same time that it reaffirmed the ordinary and proper holder of the three powers in the person of the diocesan bishop.[14] Labandeira quite rightly stressed that the Code, especially canons 135 and 391, establishes not only a distinction of functions but a "distinction of powers," not a separation or division, "as well as a partial separation of the organs exercising them."[15] It is "partial separation" because all these legal regulations have been created without prejudice to the unity of power in the pope and in the diocesan bishops, who exercise the power to make laws as well as the power to judge and the power to administer, while there is specialization and a certain separation of powers, facilitated by this distinction, in the vicarious offices and in the delegated authorities.[16]

Paragraph one of canon 391 precisely establishes that constitutional unity, and at the same time a distinction, of the power in the diocesan bishop, while paragraph two, without negating but affirming the unity and the distinction, establishes a partial separation in the exercise of the executive and judicial power when attributing it also to the vicarious organs of the diocesan bishop.

12. Cf. J. HERRANZ, *Studi sulla nuova legislazione della Chiesa* (Milan 1990), pp. 141–148.
13. Ibid., p. 141.
14. Ibid., pp. 157–158.
15. LABANDEIRA, *Tratado*, p. 222.
16. Idem, *La distinción*, pp. 94 and 97.

b) Canon 335 of the 1917 Code established that it devolved upon the bishop to govern the diocese "with legislative, judicial and coercive power." Doctrine was not unanimous in the interpretation of the content of coercive power. The first *schema* of the Constitution on the Church of Vatican II, when referring to the power of the bishop, spoke generically of legislative power and the right and duty to *coercere*, *cogere* and *punier*.[17] A subsequent draft spoke of the right and duty to *praescribere*, *administrare* and *coercere*,[18] and then in the final draft, as we have seen above, the content of the power of the bishop was established as *ferre leges*, *facere iudicium* and *moderare* everything related to the order of worship and of the apostolate (*LG* 27). In the explanation that the respective Commission gives on this latter draft, it is said that "according to traditional terminology, the three functions inherent to power of governance, that is, the power to promulgate laws, to judge, and to administer, in various ways, are set forth."[19] There was a shift from coercive power to administrative power, called executive power, which is the terminology used by canon 391, together with the also traditional legislative and judicial power.

While canon 191 of the Code, parallel to the one under discussion, does not contain any express reference to the exercise of the power of governance "according to law," canon 391—in a certain continuity with the preceding canon 335 of the 1917 Code that established the exercise of the power "in accordance with the sacred canons"—places particular emphasis in three different passages on the exercise "according to law" of the power of the diocesan bishop. "The diocesan bishop governs the particular church entrusted to him with legislative, executive and judicial power, in accordance with the law" (§ 1). This established a legal principle in the exercise of power on the part of the bishop,[20] in its formal aspects (modes of exercise, procedures, etc.) as well as in its substantive aspects (material competency, subjection to the superior law, respect for customs and legitimate traditions, etc.).

In fact, the exercise of the power of the diocesan bishop "is ultimately controlled by the supreme authority of the Church" and the power "can be confined within certain limits should the usefulness of the Church and the faithful require it" (*LG* 27). Thus canon 381 excludes from the exercise of the power of the bishop "those matters which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to some other ecclesiastical authority," for example, not only those competencies re-

17. Cf. *Acta Synodalia S. Concilii Oecumenici Vaticani II*, I–IV (Typis polyglottis Vaticanis 1971), p. 25. P.G. MARCUZZI, "Distinzione della 'potestas regiminis' in legislativa, esecutiva e giudiziaria," in *Salesianum* 43 (1981), pp. 275–304; HERRANZ, *Studi*, pp. 141–169.
18. Cf. *Acta Synodalia S. Concilii Oecumenici Vaticani II*, II–I (Typis polyglottis Vaticanis 1971), pp. 239–240.
19. Cf. ibid., III–I (Typis polyglottis Vaticanis 1973), p. 254.
20. Regarding the principle of legality, cf. HERRANZ, *Studi*, pp. 113–139; LABANDEIRA, *Tratado*, pp. 171–199.

served to the Roman Pontiff but also those attributed to organs collaborating with him in the governance of the universal Church, the competencies attributed to particular councils (according to c. 445) and to the bishops' conferences (according to c. 455).

Moreover, law establishes the manner in which power must be exercised: taking into account all universal legislation, the Code in the first place, and the particular legislation that it affects, always respecting the superior law (principle of normative hierarchy). Higher law would be, in addition to divine law *stricto sensu*, the fundamental rights of the faithful, the law from the supreme authority of the Church and of the organs collaborating with it, and the provisions of particular councils and of bishops' conferences, according to the aforementioned competencies, etc. (cf. c. 135). *Pastor bonus* 158 attributes to the Pontifical Council for the Interpretation of Legislative Texts certain control of the legislation regarding the consistency of the laws and general decrees of the diocesan bishop with the universal laws of the Church.[21] With regard to higher law, within the limits established by the Code itself, the diocesan bishop may dispense from the laws promulgated by the Roman Pontiff, by the regional or provincial council, or by the bishops' conference (cf. cc. 87–88).

c) Paragraph two applies to the diocesan bishop and to the diocese the general norms of canons 135ff regarding the power of governance or of jurisdiction: "The bishop exercises legislative power himself." He can exercise this power by legislating alone as well as in the diocesan synod, in which he continues to be the only legislator (cf. c. 466). He cannot validly delegate that power to other persons (c. 135 § 2) and, therefore, to none of the consultative organs of the diocese, that is, the college of consultors (c. 502), the presbyteral council (c. 495 § 1), the episcopal council (c. 473 § 4), the pastoral council (c. 511), etc.[22] The bishop cannot, as we have seen, legislate contrary to higher law (c. 135 § 2).

The diocesan bishop possesses legislative power to incorporate and complement universal law: some canons of the Code provide for normative development by the diocesan bishop (cc. 277 §§ 2 and 3, 491 § 3, 533 § 3, 535 § 1, 537, 548 § 1, 755 § 2, 772 § 1, 775 § 1, 777, 838 § 4, 1316, etc.).[23] Moreover, by virtue of his legislative power, he regulates matters and issues not considered in universal law, including everything that may be necessary for the proper running of the life of the portion of the people of God entrusted to him. These matters, subject to regulation, may be quite varied: liturgy; discipline of sacramental procedure; organization of catechesis; Catholic schools; regulation of the diocesan, parochial, structures,

21. Cf. J. HERRANZ, "El Pontificio Consejo para la interpretación de los textos legislativos," in *Ius canonicum* 30 (1990), pp. 127–130.
22. Cf. HERRANZ, *Studi*, pp. 185–187.
23. Cf. J.L. GUTIÉRREZ, "La potestà legislativa del vescovo diocesano," in *Ius canonicum* 24 (1984), p. 523.

etc.; seminaries; permanent formation of the clergy; patrimonial issues; penal laws; etc. All of this legislative activity constitutes the nucleus of particular diocesan law that now becomes very important due to the deliberate decrease in provisions in so many areas and aspects in the current Code in comparison to that of 1917.

The bishop exercises executive power "either personally or through vicars general or episcopal vicars, in accordance with the law" (c. 391 § 2). Most of the juridical activity of the diocese is concentrated within the scope of the exercise of executive or administrative power. This power can be exercised personally by the bishop or through the vicars general (cf. c. 475) or through the episcopal vicars (cf. c. 476).[24] The executive or administrative power that the bishop possesses to perform any type of administrative acts, except those reserved by the bishop or that require a special mandate pursuant to law (cf. c. 479), devolves upon the vicar general throughout the diocese and the episcopal vicar within his sphere.[25] This mandate is necessary for those acts entailing the exercise of executive power that the canons attribute nominally to the diocesan bishop (cf. c. 134 § 3).

The vicars do not have exclusive competencies with regard to the bishop: "in the Church there are no autonomous deconcentrated organs with respect to the principal organ, but all are subject to hierarchical subordination, to substitution and reserve on the part of the pope or of the bishop." Their competencies are "concurrent and subordinate" to those of the bishop "with no room to ever interpret the actions of subordinates as interference or invasion of other competencies."[26] Naturally, there is room for the exercise of the executive or administrative power with the use of personal delegation of power,[27] which is regulated in canons 136–142. In the exercise of executive power, the bishop also makes use of the diocesan curia (cf. cc. 469ff).

The diocesan bishop exercises judicial power "either personally or through a judicial vicar and judges, in accordance with the law" (c. 391 § 2). The diocesan bishop is the judge of first instance in his diocese for causes not expressly excepted by law and he can exercise judicial power himself or through others (cf. c. 1419 § 1). Unless the small size of the diocese or the shortage of causes advises otherwise, the bishop must appoint a judicial vicar or an official other than the vicar general (cf. c. 1420). He must also appoint diocesan judges (cf. c. 1421). Moreover, if there is a

24. Cf. A. VIANA, "Naturaleza canónica de la potestad vicaria de gobierno," in *Ius canonicum* 28 (1988), pp. 99–130.

25. Cf. idem, "Las relaciones jurídicas entre el vicario general y los vicarios episcopales," in *Revista española de derecho canónico* 45 (1988), pp. 251–260.

26. LABANDEIRA, *Tratado*, pp. 161–162.

27. J.I. Arrieta, art. "Vescovi," cit.

shortage of qualified persons, it is relatively common for several bishops to establish together a single inter-diocesan tribunal (cf. c. 1423).

In the exercise of the power of governance or of jurisdiction, special care should be taken in the proper formalization of the acts, with an eye to clarity, coherence, and adequate and correct denomination of those acts. It is highly important to make use of the necessary advice of experts in the respective matters and also of the canonist as an expert on the law. An Official Bulletin of the diocese plays a major role in the development of particular diocesan law which is technically organized well and in the effectiveness of the acts resulting from the exercise of the power of governance.

392 **§ 1. Ecclesiae universae unitatem cum tueri debeat, Episcopus disciplinam cunctae Ecclesiae communem promovere et ideo observantiam omnium legum ecclesiasticarum urgere tenetur.**

§ 2. Advigilet ne abusus in ecclesiasticam disciplinam irrepant, praesertim circa ministerium verbi, celebrationem sacramentorum et sacramentalium, cultum Dei et Sanctorum, necnon bonorum administrationem.

§ 1. Since the Bishop must defend the unity of the universal Church, he is bound to foster the discipline which is common to the whole Church, and so press for the observance of all ecclesiastical Laws.

§ 2. He is to ensure that abuses do not creep into ecclesiastical discipline, especially concerning the ministry of the word, the celebration of the sacraments and sacramentals, the worship of God and the cult of the saints, and the administration of goods.

SOURCES: § 1: c. 336 § 1; *LG* 23; *CD* 16; Paulus PP. VI, Exhort. Ap. *Quinque iam anni*, 8 dec. 1970, I (*AAS* 63 [1971] 100)
§ 2: c. 336 § 2; Benedictus PP. XV, Let.. *Venerabilis frater*, 15 Oct. 1921 (*AAS* 14 [1922] 7–10); SCCouncil Litt. circ., 15 ian. 1927; SCHO Decr. *Iam olim*, 26 maii 1937 (*AAS* 29 [1937] 304–305); *LG* 27; *DPMB* 65, 83, 87, 133–138

CROSS REFERENCES: cc. 205, 375 § 2, 386–387, 1273–1290

COMMENTARY

Valentín Gómez-Iglesias C.

Obligation to promote and safeguard ecclesiastical discipline

1. In accordance with the preceding canon, canon 392 refers to the mission of the diocesan bishop to promote and safeguard ecclesiastical discipline within the context of the defense of the unity of the entire Church.

"All Bishops have the obligation to foster and safeguard the unity of faith and to uphold the discipline which is common to the whole Church," as a manifestation of the "care and solicitude for the whole Church" (*LG* 23). This solicitude begins with determination in the exercise of all facets of their "*munus pastorale*" in his own diocese, inasmuch as "in rul-

ing well their own churches as portions of the universal Church, they contribute efficaciously to the welfare of the whole Mystical Body, which, from another point of view, is a corporate body of churches" (*LG* 23).[1] There is a close and intimate relationship between the unity of the Church and the common discipline from the point of view of the universal Church as well as in its particular aspects. In fact, laws are for seeking and protecting the common ecclesial good, the good of the entire Mystical Body. Communion is manifested and realized in their faithful compliance and ecclesial unity. There must be harmony and a close rapport between the common and the particular discipline, because this particular discipline contributes effectively to the discipline of the entire Church, and because any weakening of particular discipline would contribute to the creation of a climate of indifference, if not contempt, for law and authority, with the resulting prejudice to the other particular churches and to the entire Church.

2. Paragraph one of the canon echoes the cited conciliar texts, establishing that by reason of his "obligation to defend the unity of the universal Church, the bishop is bound to foster the discipline which is common to the whole Church, and so press for the observance of all ecclesiastical laws." Basically, this precept merely guarantees that the Church of Christ can be found in the various particular churches in its "*unitas fidei et communionis*" of which the bishop in his diocese is the "visible source and foundation" (*LG* 23). As *communio* can never be understood "as a certain vague feeling, but rather as an organic reality that requires a juridical form" (*pen* 2), this juridical dimension is extended to the threefold aspect itself: communion in faith, in the sacraments, and in the governance or government.

Canon 205 explains what the bonds of communion are such that one can speak fully of the faithful: "faith, the sacraments and ecclesiastical governance." Canon 375 § 2 explains what the conditions are for which bishops may exercise the offices of teaching, sanctifying and governing that they receive through episcopal ordination: "in hierarchical communion with the head of the College and its members" (cf. *LG* 21). The effective validity of the common discipline of the Church—required by the same essence of the "*communio hierarchica*"—helps guarantee that threefold aspect of communion. Weakening or corruption of "*communio in regimine*" cannot fail to affect the unity and communion in the faith and in the sacraments.

3. Within the common discipline of the Church, the Code plays a predominant role. In the document of promulgation, John Paul II expressed his desire that "joy and peace, with justice and obedience, may commend this Code, and that what is bidden by the head will be obeyed in the body."

1. Cf. G. PHILIPS, *L'Église et son mystère au deuxième Concile du Vatican*, I (Paris 1967), pp. 308–310.

He recommended "its observance to the care and vigilance of all who are responsible" (*SDL*), that is, to the pastors, especially the bishops.

Inasmuch as the Code is the supreme law for the entire Latin Church, failure to effectively promote its application and compliance would give rise to a split in the communion with the Roman Pontiff and thereby in the unity of the Church. On the other hand, if the worst thing for a law—that should remain a law—is its noncompliance, the eventual nonobservance of this fundamental piece of common discipline of the Church would imply the prevention of the carrying out in practice of a good part of the Council's achievements of which the Code is "an effective instrument" of fulfillment according to the supreme legislator (*SDL*).

Still, there is no need to limit oneself to this law of the Church. Promoting common discipline entails "demanding compliance with all ecclesiastical laws," universal as well as particular laws, regardless of whom the legislator is: an ecumenical council, the Apostolic See, particular councils, bishops' conferences, the current diocesan bishop or his predecessors. It is worth recalling that "canonical laws by their very nature demand observance," as John Paul II stated in *Sacrae disciplinae leges*.

Promoting common discipline, however, does not entail just urging observance of all ecclesiastical laws, but also of all "legitimate customs." Canon 392 does not expressly refer to them, but canon 201, its parallel text in the Eastern Code, does.

4. Paragraph two indicates, not exhaustively, some matters that must be the object of special vigilance on the part of the bishops in order to avoid abuses: "the ministry of the word, the celebration of the sacraments and sacramentals, the worship of God and the cult of the saints, and the administration of goods." Its parallel text in the Eastern Code, canon 201 § 2, is similar, but substitutes the reference to administration of goods with "the execution of pious wills."

Canon 336 of the 1917 Code included other matters related to the faith—teaching of Christian doctrine and of Catholic religion—and with the customs of the clergy and of the faithful people, in a way set forth in other places in the current Code, especially in canons 386–387. The matters indicated in paragraph two of the canon in question refer mostly to the essential content of the office of teaching and sanctifying. It is a matter of protecting the authenticity of these intra-ecclesial juridical assets and of the rights and obligations of the faithful and of the hierarchy with respect to them. In the possible abuses, the "*salus animarum*" directly comes into play. But also other more collateral, human aspects—administration of assets, pious wills, etc.—take on importance in the ecclesiastical discipline. The exemplary nature in these aspects is an important evangelical testimony accessible to all people of good will.

5. The demand for observance of all ecclesiastical laws and of legitimate customs as well as suitable vigilance in order to prevent abuse in ec-

clesiastical discipline must be effectively met. This effectiveness is achieved through persuasion and constant dialogue as well as with "counsels, exhortations and example" (*LG* 27) and with the exercise, when needed, of the power of governance: laws, decrees, precepts; and also judgments on the conducts that are outside communion or cause a rift in it, imposing the respective sanctions, if necessary, according to the norms of books VI and VII of the current Code.

Moreover, in accordance with canons 23–28, customs contrary to ecclesial discipline must be expressly, actively and diligently condemned. Omitting the recourse to judicial means or merely repeating general ideas or principles usually leads to a worsening of situations. Neither is it a matter of always resorting to the higher authority to intervene, but of assuming, also in this respect, one's own responsibility.

It is necessary that ecclesiastical laws be complied with in a diocese for intra-ecclesial justice (specifically legal justice) to be served. Without compliance there is no true charity or reason for real ecclesial peace, a condition of all true pastoral efficacy. This is a very significant visible aspect of the same ecclesial communion.

393 **In omnibus negotiis iuridicis dioecesis, Episcopus dioecesanus eiusdem personam gerit.**

In all juridical transactions of the diocese, the diocesan Bishop acts in the person of the diocese.

SOURCES: —

CROSS REFERENCES: cc. 115 § 2, 116, 118, 373, 1419 § 2, 1480 § 2

COMMENTARY

Valentín Gómez-Iglesias C.

Juridical representation of the diocese on the part of the diocesan bishop

Canon 1653 § 1 of the 1917 Code determined that the local ordinary could represent the cathedral church and the episcopal *mensa* in legal proceedings, establishing a series of conditions for doing it lawfully. Yet, doctrine discussed who represented the diocese as such because there was a lacuna in the law. This canon, which is new in the current Code, and also its parallel text in the Eastern Code, canon 190, fills the former lacuna: "In all juridical transactions of the diocese, the diocesan bishop acts in the person of the diocese."[1]

The particular churches, once legitimately erected, enjoy *ipso iure* public juridical personality (cf. cc. 373 and 116). In turn, canon 118 establishes that those whose competence is recognized by universal or particular law, or proper statutes, represent the public juridical person, acting in its name. Canon 393 acknowledges the bishop as the ex officio representative of the diocese in all possible juridic transactions, that is, in the ecclesiastical as well as in the civil sphere, in the administrative as well as in the judicial sphere. He is the representative of the diocese as such, given that, for example, the seminary is represented by the rector (c. 238 § 2), the parish by the parish priest (or, if applicable, the moderator of the parochial team) (cc. 532, 543 § 2, 3°). This does not prevent the bishop, having a juridical person under his jurisdiction, from representing him personally,

1. Regarding the canonical concept of representation and how it differs from other forms, cf. E. LABANDEIRA, *Tratado de derecho administrativo canónico*, 2nd ed. (Pamplona 1992), pp. 57–58, 99–100; D. GARCÍA HERVÁS, *Presupuestos constitucionales de gobierno y función judicial en la Iglesia* (Pamplona 1989), pp. 200–209, 233–234.

or through another in a legal proceeding, should that person have no representative or if he is negligent (cf. c. 1480). However, paragraph two of canon 1419 provides that, when the case concerns rights or temporal goods of a juridical person represented by the bishop, the appeal tribunal is to judge in the first instance (cf. c. 1419 § 2).

394 **§ 1. Varias apostolatus rationes in dioecesi foveat Episcopus, atque curet ut in universa dioecesi, vel in eiusdem particularibus districtibus, omnia apostolatus opera, servata uniuscuiusque propria indole, sub suo moderamine coordinentur.**

§ 2. Urgeat officium, quo tenentur fideles ad apostolatum pro sua cuiusque condicione et aptitudine exercendum, atque ipsos adhortetur ut varia opera apostolatus, secundum necessitates loci et temporis, participent et iuvent.

§ 1. The Bishop is to foster various forms of the apostolate in his diocese and is to ensure that throughout the entire diocese, or in its particular districts, all works of the apostolate are coordinated under his direction, with due regard for the character of each apostolate.

§ 2. He is to insist on the faithful's obligation to exercise the apostolate according to the condition and talents of each. He is to urge them to take part in or assist various works of the apostolate, according to the needs of place and time.

SOURCES: § 1: *CD* 17; *DPMB* 139–161
§ 2: Pius PP. XII, Alloc., 5 oct. 1957 (*AAS* 49 [1957] 922–939); *CD* 17; *DPMB* 143–147

CROSS REFERENCES: cc. 209, 211, 212 § 1, 215–216, 225, 278, 298–299, 301–302, 387, 678 § 1, 680, 738

COMMENTARY

Valentín Gómez-Iglesias C.

The diocesan bishop, promoter and coordinator of the unity and diversity of the apostolate

1. The apostolate in the Church intrinsically possesses a unifying character: it is participation in the mission of Christ, carried on in the Church according to the historical manifestation of the saving mission. However, that unity never means uniformity, but has within it the diversity which is characteristic of authentic communion (*Communionis notio* 15–16). In fact, the Holy Spirit unifies the Church "in communion and in the works of ministry" (*LG* 4) and "according to his own richness and the needs of the ministries, gives his different gifts for the welfare of the

Church" (*LG* 7), a variety of "hierarchic and charismatic" gifts (*LG* 4), and "diversity of ministry but unity of mission" (*AA* 2). "So amid variety all will bear witness to the wonderful unity in the Body of Christ: this very diversity of graces, of ministries and of works gathers the sons of God into one" (*LG* 32).

That variety and diversity come from many factors: hierarchical distinction, the same diversity in the forms of ecclesiastical organization (also supra-diocesan), the variety of charisms and the respective manifestations of Christian freedom, in individual as well as associated initiatives, the variety of ways of life and of the apostolate, etc. This diversity and variety is good: it confers on unity the character of communion (*Communionis notio* 15). "For they [the pastors of the Church] know that they themselves were not established by Christ to undertake alone the whole saving mission of the Church in the world, but that it is their exalted office so to be shepherds of the faithful and also recognize the latter's contribution and charisms that everyone in his own way will with one mind, cooperate in the common task" (*LG* 30).[1] The fostering of unity that does not hinder diversity, as well as the recognition and the promotion of a diversity that enriches it, is the fundamental responsibility of the Roman Pontiff for the whole Church, apart from the general right of the same Church, of each bishop in the particular church entrusted to his pastoral ministry" (*Communionis notio* 15).

2. It is within this context of the mission of the diocesan bishop to promote unity and diversity that does not hinder unity but rather enriches it that the newly drafted canon 394 is situated wherein the diocesan bishop is presented as the promoter of the diverse forms of the apostolate and of their coordination, always respecting the identity characteristic of each, that is, promoter of the unity and of the diversity in the apostolate.

As a "visible source and foundation of unity" in his particular church (*LG* 23), it devolves upon the diocesan bishop to protect the unity of the apostolate in his diocese, especially guarding communion in faith, the sacraments and the system of governance. The bishop also protects unity and communion when he promotes and fosters the diverse forms of the apostolate, apostolic activities or enterprises existing in the diocese, whether they are traditional forms of the apostolate or they are other new forms. He must support and promote everything that the Holy Spirit arouses in the Church, favoring a just liberty, which can only be considered as assets for the diocesan community. Diversity is not merely something to be tolerated; on the contrary, it is an asset that must be fostered.

Coordination among the diverse activities of the apostolate in the diocese is also a requirement for protection of the unity of the apostolate.

1. Cf. A. DEL PORTILLO, "El obispo diocesano y la vocación de los laicos," in P. DELHAYE–L. ELDERS, eds., *Episcopale munus* (Assen 1982), pp. 189–206.

Starting from legitimate diversity, coordination cannot be conceived of as centralized planning, nor as a controlled execution, nor as a denial of the legitimate autonomies that, in the Church, are a channel for enrichment of communion: from the autonomy of each of the faithful, to movements and associations of the faithful, to institutes of consecrated life and societies of apostolic life, to that which, in a certain way, within the diocesan organization, belongs to parochial communities; and without forgetting the presence in the diocese of possible personal ecclesiastical divisions (military ordinariates, personal prelatures, etc.) that are autonomous jurisdictions.

Diocesan coordination must seek to unite around common pastoral orientations; to establish channels for collaboration, exchange of experiences, information, etc., among the diverse forms of apostolatethrough meetings, publications, etc., always with an eye not to bureaucratize diocesan life; and to resolve any possible conflicts that may arise. Joint initiatives can also be taken, but in these initiatives, as in all aspects of coordination, care should be taken in order that each form, activity or institution maintain unblemished its own apostolic character, its own nature and identity (cc. 394 § 1 and 680).

3. The bishops, in the exercise of that coordination of the apostolate in their dioceses, must honor for the faithful "their right and duty to play their part in building up the Mystical Body of Christ" (*CD* 16; cf. also *PO* 9).[2] "All the faithful have the obligation and right to strive so that the divine message of salvation may more and more reach all people of all times and all places" (c. 211; cf. also c. 225; *LG* 33; *AA* 2–3). This right and duty of each of the faithful may be exercised individually or in an association (cc. 215 and 278), promoting and supporting their own apostolic initiatives (c. 216) or participating and assisting, according to the needs of the time and place, in other initiatives of the apostolate (c. 394 § 2).

The diocesan bishop must urge the faithful to fulfill the obligation to exercise the apostolate that by virtue of baptism and confirmation (cf. c. 225) belongs to each according to his or her condition and ability. At the same time he must counsel them to participate and help in diverse apostolic initiatives or activities (c. 394 § 2).

4. On the part of the faithful, especially those responsible for the diverse forms of the apostolate, union with the diocesan bishop must be considered a duty of communion (cc. 209 and 212 § 1), which has juridically binding aspects and manifestations.[3] However, this must go further, constituting a positive effort to participate and help in the objectives of the diocesan pastoral plan and to report on the progress of the respective

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2. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia*, 3rd ed. (Pamplona 1991), pp. 117–119, 210–224.

3. Cf. DEL PORTILLO, *Fieles*, pp. 108–114.

apostolic initiatives, maintaining an attitude of cordial harmony, openness and availability. This demand for unity and communion does not prevent the faithful, when appropriate, from asserting their legitimate rights to object to having, for the sake of so-called coordination, possible apostolic initiatives confined within rigid pastoral schemes, apostolic spontaneity stifled, spheres of proper autonomy waived or even their own charisms spoiled. Unity is not uniformity: uniformist or closed visions of the diocesan pastoral plan impoverish the life of the diocese. On the other hand, legitimate diversity confers on unity the character of communion and enriches the particular church entrusted to the diocesan bishop.

395 **§ 1. Episcopus dioecesanus, etiamsi coadiutorem aut auxiliarem habeat, tenetur lege personalis in dioecesi residentiae.**

§ 2. Praeterquam causa visitationis Sacrorum Liminum, vel Conciliorum, Episcoporum synodi, Episcoporum conferentiae, quibus interesse debet, aliusve officii sibi legitime commissi, a dioecesi aequa de causa abesse potest non ultra mensem, sive continuum sive intermissum, dummodo cautum sit ne ex eius absentia dioecesis quidquam detrimenti capiat.

§ 3. A dioecesi ne absit diebus Nativitatis, Hebdomadae Sanctae et Resurrectionis Domini, Pentecostes et Corporis et Sanguinis Christi, nisi ex gravi urgentique causa.

§ 4. Si ultra sex menses Episcopus a dioecesis illegitime abfuerit, de eius absentia Metropolita Sedem Apostolicam certiorem faciat quod si agatur de Metropolita, idem faciat antiquior suffraganeus.

§ 1. The diocesan Bishop is bound by the law of personal residence in his diocese, even if he has a coadjutor or auxiliary Bishop.

§ 2. Apart from the visit ad limina, attendance at councils or at the synod of Bishops or at the Bishop's Conference, at which he must be present, or by reason of another office lawfully entrusted to him, he may be absent from the diocese, for a just reason, for not longer than one month, continuously or otherwise, provided he ensures that the diocese is not harmed by this absence.

§ 3. He is not to be absent from his diocese on Christmas Day, during Holy Week, or on Easter Sunday, Pentecost and Corpus Christi, except for a grave and urgent reason.

§ 4. If the Bishop is unlawfully absent from the diocese for more than six months, the Metropolitan is to notify the Apostolic See. If it is the Metropolitan who is absent, the senior suffragan is to do the same.

SOURCES: § 1: c. 338 § 1
§ 2: c. 338 § 2
§ 3: c. 338 § 3
§ 4: c. 338 § 4

CROSS REFERENCES: cc. 383, 533 § 2, 1396, 1405 § 1, 3°

COMMENTARY

Valentín Gómez-Iglesias C.

Obligation of the diocesan bishop to reside in his diocese

1. Canons 395–400 contain some provisions defining concrete juridical situations of the diocesan bishop: some specific traditional obligations that are not situated in the specific scope of one of the functions of teaching, sanctifying or governing, but rather contain aspects of the exercise of the three functions or *triplex munus pastorale* of the bishop in his diocese.[1]

Canon 395 establishes the obligation of personal residence of the diocesan bishop in his diocese. This obligation, sanctioned in the Church since ancient times, is included in the Decree of Gratian (*C* 7, q. 1, cc. 19–21, 25–26) and the Decretals of Gregory IX (*X* III, 4, 9).

The Council of Trent confirms this obligation, situating it among the most important disciplinary aspects for true reform in the Church. The bases—divine natural law, divine positive law or ecclesiastical law—as well as specific determinations, were the subject of extremely lively discussions in the conciliar hall. In session VI of the Council, June 13, 1547, the Decree *De residentia episcoporum et aliorum inferiorum* was promulgated, in which—after denouncing prelates who moved to the courts and chanceries or gave precedence to their personal temporal interests, physically and morally abandoning the portion of the flock entrusted to them—established that, if there was no legitimate impediment or just and appropriate reasons, should they remain outside of their church for six months, they would *ipso iure* incur very severe penalties and, should the desired reform not take place, they could even be removed by the Roman Pontiff.

Sixteen years later, the same Council, in session XXIII, July 15, 1563, in canon 1 of the Decree *De reformatione*, reconsidered the matter and nipped in the bud opposition to the application of the Decree of 1547 and false interpretations that made an absence shorter than six months legitimate. The Decree of 1563 established that legitimate reasons (Christian charity, urgent need, due obedience or obvious benefit to the Church or the State) must be approved in each case by the Roman Pontiff or by the metropolitan (or in his absence by the senior suffragan) with subsequent control in the charge of the provincial councils. Apart from these cases, the Decree authorizes bishops to be absent for a brief period of time (two

1. Cf. J. PROVOST, "Canonical Reflection on Selected Issues in Diocesan Governance," in J.K. MALLET, ed., *The Ministry of Governance* (Washington 1986), pp. 209ff.

or, at most, three months per year, either continuous or otherwise), leaving to their conscience an evaluation of the validity of the reason, provided that they adopt appropriate measures to avoid harm to the souls. Such absences could not coincide with the seasons of Advent and Lent, with Christmas, Easter, and Corpus Christi, unless for a grave and urgent reason. Should they be illegitimately absent for a shorter period of time than six months, proportionally to the period of absence, the same minor penalties established in the Decree of 1547 for illegitimate absences of over six months applied.

The Roman Pontiffs following the Council of Trent have stressed the seriousness of the obligation of residence for diocesan bishops, and the 1917 Code substantially included (in c. 338) the content of the decree by the Council of Trent with some other determinations.[2]

2. Canon 395 is consistent with canonical tradition and, specifically, with canon 338 of the 1917 Code, with the appropriate modifications. Canon 204 of the Eastern Code is also similar to the canon under discussion, with some simplifications in its wording. The diocesan bishop, even if he has a coadjutor or auxiliary bishop, must personally reside in the diocese (*CIC* c. 395 § 1).

As long as provision is made that the diocese may not be harmed by his absence, the bishop "for a just reason" may be absent from the diocese for a maximum period of one month per year, continuously or otherwise. Absences for visits *ad limina*, attendance at councils (ecumenical or particular), the Synod of Bishops and meetings of the bishops' conference, as well as an absence necessary for compliance with an office lawfully entrusted to him (c. 395 § 2) are not be included in this period. Whether due to the conscientious solicitude today demanded of the diocesan bishop in compliance with his diocesan *munus pastorale* (cf. for example c. 383), or due to major occasions of legitimate absences motivated by his status as a member of the Episcopal College and the solicitude for all churches that recent magisterial doctrine has stressed, the fact is that the maximum term of three months per year established by canon 338 § 2 of the 1917 Code has been changed to one month in the current Code.[3]

We agree with Chiapetta that by analogy, canon 533 § 2 can be applied to the bishop, in the sense that days spent in a spiritual retreat should not be calculated in the established one-month's absence.[4] Only a grave and urgent reason can justify the bishop's absence from his diocese on the days of major solemnity: on Christmas Day, Holy Week and Easter Sunday, Pentecost and Corpus Christi (c. 395 § 3). The 1917 Code (c. 338

2. Cf. F. CLAEYS-BOUUAERT, art. "Évêques," in *Dictionnaire de droit canonique* V (Paris 1953), cols. 582–583.

3. Cf. *Comm.* 18 (1986), pp. 151–152, 167–168; 12 (1980), pp. 252–253.

4. Cf. L. CHIAPPETTA, *Il codice di diritto canonico: commento giuridico-pastorale*, I (Naples 1988), p. 485.

§ 3) required his presence "in the Cathedral," whereas the current Code only speaks of presence "in the diocese."

In the event of an illegitimate absence for over six months, the metropolitan must inform the Apostolic See and, if the absent party is the metropolitan, the senior suffragan is to do the same (c. 395 § 4). The Roman Pontiff shall judge the situation (c. 1405 § 1, 3°) and shall impose "a just penalty, not excluding, after a warning, deprivation of the office" (cf. c. 1396).

3. We would just like to add that, taking into account the growing demands for mobility on the part of the bishops to exercise their care for all the churches, this duty takes on particular current importance. It is necessary to put order into the exercise of the episcopal mission in the College: the first is the particular church entrusted to him; without this, the rest would lose importance. "It is an established fact of experience that, in ruling well their own churches as portions of the universal Church, they contribute efficaciously to the welfare of the whole Mystical Body, which, from another point of view, is a corporate body of churches" (*LG* 23). Regular availability by the bishop to attend to and hear all the faithful and, especially, the priests, is necessary—it is an obligatory service—thus the usefulness of publishing a calendar of his activity in the diocesan bulletin with the days, times, and places set for that care.

396 **§ 1. Tenetur Episcopus obligatione dioecesis vel ex toto vel ex parte quotannis visitandae, ita ut singulis saltem quinquenniis universam dioecesim, ipse per se vel, si legitime fuerit impeditus, per Episcopum coadiutorem, aut per auxiliarem, aut per Vicarium generalem vel episcopalem, aut per alium presbyterum visitet.**

§ 2. Fas est Episcopo sibi eligere quos maluerit clericos in visitatione comites atque adiutores, reprobato quocumque contrario privilegio vel consuetudine.

§ 1. The Bishop is bound to visit his diocese in whole or in part each year, so that at least every five years he will have visited the whole diocese, either personally or, if he is lawfully impeded, through a coadjutor or auxiliary Bishop, a Vicar general, an episcopal Vicar or some other priest.

§ 2. The Bishop has a right to select any clerics he wishes as his companions and helpers in a visitation, any contrary privilege or custom being reprobated.

SOURCES: § 1: c. 343 § 1; Paulus PP. VI, Alloc., 9 apr. 1967 (*AAS* 59 [1967] 413–416); *DPMB* 166–170
§ 2: c. 343 § 2

CROSS REFERENCES: cc. 381, 383, 397–399, 436 § 1, 2°

COMMENTARY

Valentín Gómez-Iglesias C.

The pastoral visit to the diocese

1. Canons 396–398 regulate the pastoral visit of the diocesan bishop to his diocese. Previously, it was better known by the title of canonical visit.[1] "The pastoral visit is one of the certainly unique methods by which the bishop, between synods, may cultivate personal meetings with the clergy and the other faithful of the people of God, in order to get to know them and guide them, to exhort them to the faith and the practice of Chris-

1. For an historical perspective of this topic, cf. G. BACCRABERE, art. "Visite canonique de l'évêque," in *Dictionnaire de droit canonique* VII, cols. 1512–1594.

tian life, as well as to see close up and appraise the actual effectiveness of the structures and instruments created for pastoral service" (*DPMB* 166).

With the pastoral visit, the bishop concretely appears as a "visible source and foundation of the unity" of the particular church entrusted to him (*LG* 23). "The pastoral visit is an apostolic action, an event of grace reflecting in some way the image of that exceptional and wonderful visit, by means of which 'the prince of the pastors' (1 Pet 5:4), the bishop of our souls (cf. 1 Pet 2:25), Jesus Christ has visited and redeemed his people (cf. Lk 1:68)" (*DPMB* 166).

2. The pastoral visit is one of the oldest institutions of the Church, dating back to apostolic times, and is amply recorded in Christian sources.[2] The Decree of Gratian presents a general summary of canonical legislation on the pastoral visit up to the twelfth century (*C* 10, q. 1, cc. 4, 9–12; *C* 10, q. 3, c. 8, etc.): The bishop personally visits the diocese, if possible each year; the object of the visit is the clergy and the other faithful, acquainting himself with the state of life, and also of the buildings, mainly the churches, etc. It is also extensively set forth in the Decretals of Gregory IX (*X* I, 31, 15–16; *X* III, 39, 23; *X* V, 7, 13, etc.). The Council of Trent, especially in canon 3 of the Decree *De reformatione* of session XXIV, November 11, 1563, practically confirmed the former legislation, insisting on the obligation of bishops to visit their diocese each year, personally or through the vicar general or through another visitor in the case of a lawful impediment. If the diocese is extensive, in the first year he will visit most of it and the rest in the following year. The 1917 Code, in canons 343–346, basically follows the provisions of the Council of Trent, with the difference that the time of visitation is extended to five years.

3. Along the lines of the 1917 Code, but stressing more the pastoral service nature of the visit, canon 396—as well as its parallel in the Eastern Code, canon 205—establishes: a) the personal obligation of the diocesan bishop to visit his diocese; b) each year he must visit his diocese, in full or in part, in such a way that the entire diocese is visited within a term of five years; c) on his visits, he may be accompanied by any clergy he freely chooses, and any privilege or custom to the contrary is reprobated (for example, any privilege that may be enjoyed by any chapters, vicars forane, etc.); and d) if the bishop should be lawfully prevented, he can make the visit through the coadjutor or auxiliary bishop, the vicar general or the episcopal vicar, or another presbyter. It must be added that if the diocesan bishop should negligently fail to comply with this serious obligation, the canonical visitation would devolve upon his metropolitan upon approval of the Apostolic See (c. 436 § 1, 2°).

2. Cf. J. COLSON, *L'Évêque dans les communautés primitives: tradition paulinienne et tradition johannique de l'épiscopat des Origines à saint Irénée* (Paris 1951), pp. 61ff.

It should also be noted that the term of five years indicated for the pastoral visit is consistent with the provisions of canon 399 on the preparation of the report on the state of his diocese or the quinquennial report that the diocesan bishop must submit to the Roman Pontiff. A familiarity with the diocese resulting from the visit will facilitate the full and objective development of the quinquennial account or report.

A concrete manifestation of the importance of the pastoral visit in the episcopal ministry of the diocesan bishop is that Vatican II indicated, among other criteria for review of the boundaries of the diocese, that the territorial size and the number of faithful must be such that they allow one to properly make the pastoral visit within the established five-year term (*CD* 23, 2).

4. In the drafting process of canon 396, an enumeration of the purposes of the pastoral visit, similar to that of canon 343 § 1 of the 1917 Code, was eliminated because it was considered unnecessary.[3] Although it is true that it is not necessary to enumerate it in the text of the canon, it does seem appropriate to include it in this commentary. The purposes of the visit were enumerated thus: a) to maintain the doctrine intact and orthodox; b) to protect good morals and correcting bad ones; c) to promote charity, piety and discipline among the people and the clergy; d) to foster the apostolate; and e) to establish everything that, in view of the circumstances, is good for the faith.[4]

Therefore, the visit meets two fundamental needs of the *munus pastorale* of the bishop: a) to be informed directly and in detail on the state of the diocese (about persons as well as on the parochial communities, etc.) with regard for the content of the triple *munus* of the bishop (teaching, sanctifying and governing), information that effectively aids the bishop in determining the way to approach and handle the diverse concrete situations in order to take proper governance measures; and b) to stimulate all the faithful to cooperative action in the mission of the Church, each according to his or her own condition and office (cf. c. 208), through the exercise, more and more appreciated, of their own rights and obligations.

3. Cf. *Comm.* 12 (1980), p. 305.
4. Ibid.

397 **§ 1. Ordinariae episcopali visitationi obnoxiae sunt personae, instituta catholica, res et loca sacra, quae intra dioecesis ambitum continentur.**

§ 2. Sodales institutorum religiosorum iuris pontificii eorumque domos Episcopus visitare potest in casibus tantum iure expressis.

§ 1. Persons, catholic institutes, sacred things and places within the boundaries of the diocese, are subject to ordinary episcopal visitation.

§ 2. The Bishop may visit the members of religious institutes of pontifical right and their houses only in the cases stated in the law.

SOURCES: § 1: c. 344 § 1; CodCom Resp., 8 apr. 1924; *DPMB* 168
§ 2. c. 342 § 2; *ES* I, 38, 39; *DPMB* 118, 119

CROSS REFERENCES: cc. 199, 7°, 305 § 1, 357 § 2, 366, 1°, 535 § 4, 586, 591, 593, 615, 628 §§ 2–3, 637, 678, 681, 683 § 1, 806 § 1, 1301 § 2

COMMENTARY

Valentín Gómez-Iglesias C.

Passive subjects of the pastoral visit of the diocesan bishop

1. This canon, complementing the preceding one, determines the object or scope of the ordinary episcopal visitation: "persons, catholic institutes, sacred things and places within the boundaries of the diocese" (§ 1). Canon 205 § 2 of the Eastern Code expresses the same sense.

As regards its precedent, canon 344 § 1 of the 1917 Code, we must point out some variations, within a fundamental continuity. In fact, very early in the drafting process of this canon, together with the traditional wording (persons, sacred things and places), the expression "institutiones catholicae" was introduced. Then the question arose as to whether the bishop could perform canonical visitations to the schools and other institutions of the same type founded by the ordinary faithful ("*a privati fidelibus*"). It was decided in the negative in 1968 in meetings of the Commission and consultors: he does not have the right to the canonical visit, only the right to governance over doctrine and customs. In order to

make the difference clearer, it was decided to change the term "*institutiones*" to "*instituta*," as it is used today.[1]

Another difference with respect to canon 344 of the 1917 Code consists of the deletion in 1980 of the exception clause concerning the right of the bishop to ordinary visitation that had been maintained until that time in the draft of the canon: "unless it can be proved that they enjoy a special exemption granted by the Apostolic See." This deletion was not motivated by the unacceptability of a potential special exemption, which is still possible, but because, on the one hand, this subject is regulated in the section of the Code concerning institutes of consecrated life, and, on the other hand, because it is a general norm, for which these as well as for other institutions a special exemption is possible, but must be proven.[2] As a general rule, those areas that the Apostolic See—with regard to the common good of the Church—has removed from the power of the diocesan bishop are excluded from his right to visit.[3] Examples of special exemption include the see of the pontifical legation (local exemption from the power of governance of the diocesan bishop; cf. c. 366,1°) and the person of cardinals (personal exemption from the power of governance of the diocesan bishop; cf. c. 357 § 2).

The following are subject to visitation: "persons" (clergy, laypersons, religious with care of souls, associations, parochial communities, etc.), "Catholic institutes" (schools, centers of higher learning, religious and charitable works, etc.), "things" (sacred vessels, relics, sacred images, pious bequests, temporal ecclesiastical goods, parochial records and archives, etc.), and "sacred places" (churches and oratories, cemeteries etc.) (cf. cc. 305 § 1, 535 § 4, 683 § 1, 806 § 1, 1301 § 2). It is interesting to note also that the right to visitation is not subject to prescription (cf. c. 199, 7°).

2. Paragraph two establishes that the ordinary pastoral visitation to members of religious institutes of pontifical right and to their homes only devolves upon the diocesan bishop in cases specified by law. In the Eastern Code, canon 205 § 3 basically states the same norm. What in canon 344 § 2 of of the 1917 Code were "exempt religious,"[4] for the purposes of visitation, are now "members of religious institutes of pontifical right" (cf. cc. 591 and 593).

Regarding the pastoral visit to the religious and to their homes, it is worth indicating that internal discipline of the institutes of consecrated life are part of the just autonomy they enjoy and canonical visitation

1. Cf. *Comm.* 18 (1986), p. 153.
2. *Comm.* 12 (1980), p. 306.
3. Cf. E. FOGLIASSO, art. "Exemption canonique," in *Dictionnaire de droit canonique* VI, cols. 637–646.
4. Idem, art. "Exemption des religieux," in *Dictionnaire de droit canonique* VI, cols. 646–665.

therefore devolves upon the superiors of the institutes (cf. cc. 586, 628 1). On the other hand, religious are subjected to the power of the diocesan bishops with respect to "the care of souls the public exercise of divine worship and other works of the apostolate" (cf. c. 678 § 1) and to "works which the diocesan bishop entrusts to" them (cf. c. 681 § 1).

Therefore, the bishop may visit the churches and oratories to which the faithful in fact have normal access, schools and other works of religion or charity, be they spiritual or temporal, which are entrusted to the religious. However, he cannot visit schools that are open only to the institute's own members, which are treated by the internal description of the institute (cf. cc. 583 § 1, 806 § 1). Nonetheless, the diocesan bishop, also with respect to religious discipline, has the right and the obligation to visit monasteries *sui iuris* and the homes of institutes of diocesan right that are within the area of his diocese (cf. cc. 615, 628 § 2, 637).[5]

3. It is recommended that the faithful be adequately prepared before the pastoral visit, for example, by means of a special series of conferences and preaching on communion in the particular church, the episcopal mission and ministry; popular missions that try to reach all persons (including those more distanced from the practice of Christian life) in order to visibly highlight the spiritual and apostolic aspect, etc. (cf. *DPMB* 169).

The attitude that all those who are passive subjects of the pastoral visit must have can be inferred by analogy from the statement in paragraph two of canon 628 regarding visits to religious: acting with confidence towards the bishop; replying truthfully and with charity to his lawful questions; not diverting others from that obligation to reply; not hindering in any way the objective of the pastoral visit; in sum, charity, truthfulness, availability and confidence.

Any faithful piously present in the church or oratory during the pastoral visit are granted a partial indulgence. A plenary indulgence is granted to those faithful who, during the time of the visit, attend a sacred function presided over by the visiting bishop.[6]

The pastoral visit must be lived as an event of grace, as a meeting with the pastor himself, with a spirit of deep communion that shall entail the sense of just obedience and just liberty in the people of God.

5. Regarding visits to religious institutes, cf. V. DE PAOLIS, *La vita consacrata nella Chiesa* (Bologna 1992), pp. 221–223, 347–360.

6. Cf. Enchiridion indulgentiarum: normae et concessiones, 4th ed. (Typis polyglottis Vaticanis 1999), no. 32.

398 **Studeat Episcopus debita cum diligentia pastoralem visitationem absolvere; caveat ne superfluis sumptibus cuiquam gravis onerosusve sit.**

The Bishop is to endeavour to make his pastoral visitation with due diligence. He is to ensure that he is not a burden to anyone on the ground of undue expense.

SOURCES: c. 346; *DPMB* 170

CROSS REFERENCES: cc. 383, 396–397

COMMENTARY

Valentín Gómez-Iglesias C.

Attitude of the bishop toward the fulfillment of his pastoral visit

1. Pastoral charity is the soul of the pastoral visit (*DPMB* 166). The bishop is the teacher, pontiff and pastor for the diocese. He must behave with modesty and meekness, with kindness and affability, providing an example of charity, piety, care and poverty, always making present the figure of the Good Pastor Jesus (*DPMB* 170).

The diocesan pastoral visitation is never a control from outside, but rather contact between the pastor and the portion of the people of God entrusted to him. The bishop must behave paternally, but if circumstances warrant it, he may issue decrees, precepts, etc., always aware that the "the visit is intended to help rather than judge" (*DPMB* 166 *in fine*).

2. The typical pastoral visit of the diocesan bishop is to parishes. On this visit, the most important thing is that he meets the people (clergy, religious and laity). All elements of the visit should be directed to this end: a) as a dispenser of the mysteries of God and a moderator and guardian of the liturgical life of the diocese, he celebrates Holy Mass and proclaims the word of God, administers the sacrament of confirmation and if possible, other sacraments, especially while visiting the sick; b) he meets with children being catechized; c) he interviews and speaks with the parish priest and other priests of the parish; d) he meets with the pastoral council, associations of the apostolate subordinate to the diocesan bishop, and he visits Catholic institutes and schools and, if opportune, the cemetery; e) he meets with other clergy and religious and with laity leading parish initiatives; f) he participates in meetings with young people, with workers,

etc.; and g) he makes himself available to receive and speak with any faithful who so desire. (On the parish visit, cf. *DPMB* 168).

As the people are most important, "on the days prior or subsequent to the visit the bishop leaves to suitable priests, especially the vicars forane, the task of examining the registers of the parish and of other institutions, inspecting the sacred vessels and places, and reviewing the administration of the goods. Thus, the bishop will better be able to dedicate the time allotted to the visit to conversation and sacred ministry" (*DPMB* 168).

"When performing his function of visiting the parishes or local communities of his diocese, the bishop should not give the impression that he is merely performing an administrative function, but he must be clearly identified by the faithful as the proclaimer of the Gospel, doctor, pastor and high priest of his flock."[1]

3. Canon III of the Decree *De reformatione* of session XXIV, November 11, 1563, of the Council of Trent exhorted bishops to have paternal charity and Christian zeal towards everyone on pastoral visits. It established that the procession should be modest in order to not be a nuisance and should end as soon as possible, with due diligence. They shall seek not to incur undue expenses, shall not ask for anything as a visitation right, shall not take anything, and shall not accept any gift or money even if it is a very old custom. However, they may be fed and housed in a frugal and reasonable manner or may receive the monetary equivalent; where the custom is not to receive even this, the custom must be maintained. If by chance someone should dare to take something that does not belong to him, in addition to double restitution within one-month term, he shall be punished with other penalties, etc.

Canon 346 of the 1917 Code sets forth a major portion of the provisions of the Council of Trent. Specifically, it prescribed four duties of the bishop: a) diligence in the pastoral visit, without undue delays; b) taking care not to be a nuisance or burden on anyone with unnecessary expenses; c) not receiving nor asking for oneself or for one's own, as a result of the visit, any gift; any custom to the contrary is condemned; and d) abiding by the legitimate custom of each place with regard to food and lodging, and representation and travel expenses.

The current canon 398 does not include the two latter duties from its precedent (c. 346 of the 1917 Code);[2] but the diocesan bishop would do well to keep them in mind and comply with them in making the pastoral

1. Cf. *Caeremoniale episcoporum*, Typis polyglottis Vaticanis 1984, part VIII, ch. II "De visitatione pastorali," no. 1177.
2. For the omission alluded to in the text, cf. *Comm.* 12 (1980), pp. 306–307; 18 (1986), p. 154.

visit. On the other hand, it does include the first two: diligence and moderation in expenses.

The *Directory for the Pastoral Ministry of Bishops* states the following in its conclusion: "The office of governance also connotes the style in which the bishop is to act: a manner infused with charity and wisdom, rich in every sort of humanity ...It is no longer a question of grandeur and power, with which the bishop attempts to make others accept his authority by employing pomp and majesty, but rather the conviction of the weighty burden that he has received and his consequent dedication to service." (*DPMB* conclusion)

399 **§ 1. Episcopus dioecesanus tenetur singulis quinquenniis relationem Summo Pontifici exhibere super statu dioecesis sibi commissae, secundum formam ettempus ab Apostolica Sede definita.**

§ 2. Si annus pro exhibenda relatione determinatus ex toto vel ex parte inciderit in primum biennium ab inito dioecesis regimine, Episcopus pro ea vice a conficienda et exhibenda relatione abstinere potest.

§ 1. Every five years the diocesan Bishop is bound to submit to the Supreme Pontiff a report on the state of the diocese entrusted to him, in the form and at the time determined by the Apostolic See.

§ 2. If the year assigned for submitting this report coincides in whole or in part with the first two years of his governance of the diocese, for that occasion the Bishop need not draw up and submit the report.

SOURCES: § 1: c. 340 § 1; SCCong Decr. *Per decretum*, 4 nov. 1918 (*AAS* 10 [1918] 487–503); SCPF Let., 16 apr. 1922 (*AAS* 14 [1922] 287–307); SCCong Decr. *Ad Sacra Limina*, 28 feb. 1959, 5 (*AAS* 51 [1959] 274); SCB Decr. *Ad Romanam Ecclesiam*, 29 iun. 1975, 3 (*AAS* 67 [1975] 676)
§ 2: c. 340 § 3; SCCong Decr. *Ad Sacra Limina*, 28 feb. 1959, 6 (*AAS* 51 [1959] 274)

CROSS REFERENCES: cc. 330–331, 333–334, 375, 381–382, 396, 400

COMMENTARY

Valentín Gómez-Iglesias C.

Report of the bishop to the Roman Pontiff regarding the state of his diocese

1. As the diocesan bishop must visit his ecclesiastical division every five years, with that same frequency he must have a special meeting with the Roman Pontiff in order to ensure that the attention of the successor of St. Peter may be more directly and thoroughly channeled to his diocese. Specifically, he must present to the Roman Pontiff a quinquennial report on the state of his diocese (c. 399) and, coinciding with the time of the submission of this report, he must travel to Rome to venerate the tombs of St. Peter and St. Paul and personally visit the successor of St. Peter

(c. 400). These duties have ancient and venerable theological and canonical roots.

The primacy of Peter and of his successors is the essential content of the fundamental will of Christ; without primacy, the Church would not be the Church of Christ. "This sacred synod, following in the steps of the First Vatican Council, teaches and declares with it that Jesus Christ, the eternal pastor, built the holy Church by entrusting the apostles with their mission as he himself had been sent by the Father (cf. Jn 20:21). He willed that their successors, namely the bishops, should be the shepherds in his Church until the end of the ages. However, in order that the episcopate itself might be one and undivided he placed Peter at the head of the other apostles, and in him was instituted a lasting and visible source and foundation of the unity both of faith and of communion. This teaching concerning the institution, the permanence, the nature and import of the sacred primacy of the Roman Pontiff and his infallible teaching office, the sacred synod proposes anew to be firmly believed by all the faithful" (*LG* 18) (cf. cc. 331, 333).

Since early times, the see of Rome has been presented as a point of reference of communion, as a guiding and prime criterion of authentic apostolic faith. Since the First century, the popes have been aware of their mission and, even before the end of the apostolic age, we are already at "the epiphany of the Roman primacy."[1] Starting from firm initial points that have remained constant throughout history, there has been sure and progressive development of the self-awareness of the mission of the successor of Peter, as well as in the realm of the scope and the content of the *munus petrinum*. Moved by his "care for all the churches," the pope claimed his right to intervene in the more important doctrinal and disciplinary matters of the various local churches, "in order to encourage his brothers and sisters in the faith (cf. Lk 22:32), by means of this wider experience and by virtue of his office as Vicar of Christ and pastor of the whole Church. For he was convinced that the reciprocal communion between the bishop of Rome and the bishops throughout the world, bound in unity, charity, and peace, brought the greatest advantage in promoting and defending the unity of faith and discipline in the whole Church" (*PB* Proemio 2). For that reciprocal communion, it was necessary to share pastoral concern for problems, experiences, sufferings, joys, evangelization projects, etc., and this communion required an exchange of reliable information and special coordination to foster its establishment. The pope, also as a function of the growth of the people of God throughout history, has used various means to obtain that information and to effectively carry out that harmonious communion: exchange of nuncios and delegates, epistolary correspondence, personal contacts, etc.

1. Cf. P. BATIFFOL, *L'Église naissante et le catholicisme*, 8th ed. (Paris 1922), p. 146.

2. The submission to the Roman Pontiff of the report on the state of the diocese (c. 399) and the *ad limina apostolorum* visit (c. 400) are situated within this context.

The first traces of the visit of a pastor to the Roman Pontiff are found in the Epistle from St. Paul to the Galatians, in which the Apostle himself recounts a first fifteen-day trip to Jerusalem in order to consult with St. Peter and another trip fourteen years later (Gal 1:18; 2:2). In the year 343, the Synod of Sardica sent Pope Julius a letter to suggest the advisability of his receiving information on the state of the Church in the various provinces of the Empire.[2] With regard to the *ad limina* visit, there are numerous accounts of its existence and practice beginning in the Fourth century.[3] The Decretals prescribe an oath in which the bishops promise the Roman Pontiff that they will visit personally or through a delegate the tomb of the Apostles, unless they have been expressly exempted (*X* II, 24, 4). Although the Council of Trent discussed the *ad limina* visit, in its documents it did not set forth any indication in this regard.[4] It was Sixtus V who, with the Apostolic Constitution *Romanus Pontifex* (December 20, 1585), regulated all these matters as a whole, imposing on bishops the obligation to swear before the Cardinal Protodeacon—before being consecrated or receiving the pallium or being transferred to a see—that they would perform the *ad limina* visit, so that they could personally report to the pope on the exercise of their pastoral ministry and the state of the Church in their respective divisions.In turn, they would receive and diligently put into practice "the apostolic mandates." At the same time, *Romanus Pontifex* abolished any privilege, dispensation, etc., to the contrary.[5] The same Sixtus V, when he proceeded to the formal configuration of the Roman Curia by means of the Papal Bull, *Immensa aeterni Dei* (January 22, 1588), assigned to the "eighth congregation for the execution and interpretation of the Council of Trent" supervision over compliance with the obligation of the *ad limina* visit. He also assigned them the competence to request from the bishops reports on the state of their division and to respond to questions asked as a result of these visits and reports.[6]

The subsequent practice on these briefs or reports was not uniform; at times the bishops reported in writing without any form, others communicated verbally to the pope and to the Congregation of the Council during the *ad limina* visit.[7] In order to avoid these disparities, and make the reports more effective, the Congregation of the Council, by mandate of Benedict XIII, published instructions grouped into nine chapters expressly

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2. Cf. V. CÁRCEL ORTÍ, "Nota storico-giuridica sulla visita 'ad limina,'" in *Direttorio per la visita "ad limina"* (Vatican City 1988), p. 31.
3. Ibid.
4. Ibid., p. 32.
5. *Bullarium Romanum* (Turin 1857–1872; Naples 1867–1885), v. VIII, pp. 641–645.
6. Ibid., pp. 991–992.
7. Cf. V. CÁRCEL ORTÍ, "Nota...," cit., p. 35.

indicating the items that must always be discussed in the report on the state of the diocese.[8] These instructions were confirmed by Benedict XIV with the Apostolic Constitution *Quod sancta* (November 23, 1740), which extended the obligation to the abbots *nullius*. *Quod Sancta* also established the frequency of the *ad limina* visit: every three years for the bishops of Italy and the adjacent islands and every five years for all other bishops. On the same date, with the Apostolic Constitution *Decet Romanum Pontificem*, he created a particular "super *statu ecclesiarum*" Congregation, commonly known as "il Concilietto," in that it was a subsidiary of the Congregation of the Council, for the purpose of receiving and studying reports sent by bishops.[9] With the reform of the Roman Curia of 1908, these competencies shifted to the Consistorial Congregation,[10] which, with the Decree *A remotissima*,[11] established the five-year period for the frequency of reports on the state of the diocese and the *ad limina* visit, and allowing the bishops outside of Europe to make the visit every ten years. The Decree was accompanied by an *Ordo servandus in relatione de statu ecclesiarum*, with a questionnaire of 150 subjects divided into sixteen chapters.[12]

The *Codex iuris canonici*, 1917 regulated the obligation of the report on the state of the diocese and the *ad limina* visit in cc. 248 and 340–342, fundamentally setting forth the prescriptions of 1908–1909 and, therefore, in line with canonical tradition. A year after the promulgation of the Code, the Consistorial Congregation adapted the *ordo servandus* to the new legislative text of the Church, with a questionnaire of 100 subjects divided into twelve chapters.[13] In 1959, the obligation of the *ad limina* visit and the quinquennial report was extended to include the military vicars.[14]

Although during the preparation and proceedings of Vatican Council II some proposals were intended for the institutes under discussion, no conciliar document discussed them expressly. In the reform of the Roman Curia carried out by Paul VI, the competencies that the Consistorial Congregation had over these matters passed to the Congregation for Bishops,

8. Cf. A. LUCIDI, *De Visitatione Sacrorum Liminum. Instructio S.C. Concilii edita iussu Benedicti XIII*, I, 3rd ed. (Rome 1883).
9. Cf. *Benedicti XIV P.M. Bullarium*, I (Prato 1845), pp. 20–22.
10. PIUS X, Ap. Const. *Sapienti Consilio*, July 29, 1908, I, 2, 3, in *AAS* 1 (1909), pp. 7–19. Also cf. his *Normae peculiares*, VII, II, 6, ibid., pp. 36–108.
11. SCCong, Decr. *De relationibus dioecesanis et visitatione Ss. Liminum*, December 31, 1909, in *AAS* 2 (1910), pp. 13–16.
12. *AAS* 2 (1910), pp. 17–34.
13. SCCong, Decr. *De relationibus dioecesanis. Nova formula*, November 4, 1918, in *AAS* 10 (1918), pp. 487–503. The new formula for mission territories was established by the SCPF, Ep *De relationibus missionum singulis quinquenniis exhibendis*, April 16, 1922, in *AAS* 14 (1922), pp. 287–307. Regarding the quinquennial relation in *CIC*/1917, cf. J.J. CARROLL, *The Bishop's quinquennial report* (Washington 1956).
14. SCCong, Decr. *De sacrorum liminum visitatione a Vicariis castrensibus peragenda*, February 28, 1959, in *AAS* 51 (1959), pp. 272–274.

heir of the former Congregation (*REU* 49 § 4). The Congregation for Bishops, in its Directory *Ecclesiae imago*, dedicated some lines to both institutes, situating them under the title "personal collaboration of the bishop with the Roman Pontiff" (*DPMB* 45, f-g). The same Congregation promulgated the Decree *Ad Romanam Ecclesiam* of June 29, 1975. After a theological-canonical preface, the decree regulated some aspects of the quinquennial report as well as of the *ad limina* visit in five canons: a) it derogated from § 2 of c. 340 *CIC*/1917; b) it established new criteria for distribution of geographical zones for each year of the five-year period, beginning Jan. 1, 1976; c) it declared cc. 341–342 and §§ 1 and 3 of c. 340 *CIC*/1917 to be in force; d) it charged the nuncios to remind bishops in advance of the *ad limina* visit and also the presidents of the bishops' conferences who, by agreement of the bishops, set the calendar; and e) it recommended the sending of the quinquennial report far enough in advance of the *ad limina* visit.[15] In the same year, 1975, a new outline for the quinquennial report was drafted.[16]

3. The following are the current norms of the Latin Church on the report on the state of the diocese:

a) c. 399; *PB* 28, 32, 81 and 89 *in fine*;

b) *RGCR* 142;

c) *Direttorio per la visita "ad limina,"* especially *Premesse* V and VI and nos. 1.2, 2.2.2, 3.3.2;[17]

d) Decree *Ad Romanam Ecclesiam*, no. 2.[18]

The following are the current norms in Eastern Catholic Churches regarding the quinquennial report:

a) cc. 206–207 *CCEO*;

b) *PB* 28, 32 and 58 *in fine*;

c) *RGCR* 142.

Canon 399 § 1 establishes a) the obligation of the diocesan bishop to draft a report or brief on the state of his diocese; b) according to the model determined by the Holy See; c) in order to submit it to the Roman Pontiff; d) every five years at the time and in the form established by the Holy See.

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15. SCB, Decr. *De visitatione Ss. Liminum deque relationibus dioecesanis*, June 29, 1975, in *AAS* 67 (1975), pp. 674–675.
16. Cf. X. OCHOA, *Leges Ecclesiae post CIC editae*, V (Rome 1980), cols. 7136–7146.
17. CB, *Direttorio per la visita "ad limina"* (Vatican City 1988); also consult *Ius Ecclesiae* 1 (1989), pp. 748–757.
18. SCB, Decr. *De visitatione...*, cit., no. 2. For the legislation currently in force, cf. V. CÁRCEL ORTÍ, "Legislazione e magistero di Giovanni Paolo II sulla visita 'ad limina Apostolorum,'" in *Monitor Ecclesiasticus* 118 (1993), pp. 451–500.

a) *Obligation to make the report or brief*

Canon 399 states that the obligation falls upon the diocesan bishop and, therefore, upon those on the same level as him according to law (cf. c. 381 § 2). The Directory specifies that the ordinaries of the ecclesiastical divisions must send that report (*Direttorio,* no. 1.2.1). These ordinaries include: the ordinaries of the territorial ecclesiastical divisions (diocesan bishop, prelate, territorial abbot, apostolic vicar, apostolic prefect, *permanenter constitutus* apostolic administrator) and the ordinaries of the personal ecclesiastical circumscriptions (military ordinary [*SMC* XII] and prelate of a personal Prelature [Ap. Const. *Ut sit*, no. VI and Decl. *Praelaturae personales*, no. VIII]).[19]

b) *According to the model determined by the Holy See*

The present outline for the report was published by the Holy See with the title "Formula Relationis Quinquennalis" (Typis polyglottis Vaticanis, 1982). The outline is divided into the following fourteen chapters or sections: pastoral and administrative organization of the diocese (I); general religious situation (II); economic situation of the diocese (III); sacred liturgy (IV); clergy (V); religious and secular institutes (VI); missionary cooperation (VII); seminaries and universities (VIII); catechesis (IX); Catholic education (X); laity, apostolic life and activity (XI); ecumenism, non-Christian religions, non-believers (XII); justice and charity (XIII); other pastoral issues (XIV). The report also includes eight statistics. The Directory recommends that the report be brief, clear, precise, specific, and objective in the actual description of the division, its problems, and its relations with other non-Catholic and non-Christian religious communities, civil society and public authorities (*Direttorio*, no. 1.2.3). Proper reserve must be maintained in the wording (*Direttorio*, no. 1.2.4).

c) *Presentation to the Roman Pontiff*

Canon 399 states that it should be submitted to the Roman Pontiff. The other normative texts specify that it should be sent to the competent Congregation of the Holy See (*PB* 32; *RGCR* 142); that is, the Congregation for Bishops (*PB* 81; *Direttorio*, no. 1.2.5) or the Congregation for the Evangelization of Peoples (*PB* 89 *in fine*). The pontifical representative must urge the respective ordinaries to send the quinquennial report six months before the *ad limina* visit, in order that it may be studied and a summary thereof may be submitted to the Roman Pontiff in a timely manner before the visit. The report should be submitted at least in triplicate, so that it may be distributed among the various dicasteries of the Roman Curia that must study it. Once comments are formulated, they will be sent to a special commission constituted *ad hoc* for the study of the aspects that the superiors of the dicasteries must keep in mind in discussions with

19. Ap. Const. *Ut sit*, November 28, 1982, in *AAS* 75 (1983), pp. 423–425; Decl. *Praelaturae personales*, August 23, 1982, in *AAS* 75 (1983), pp. 464–468.

the bishop (*PB* 32; RGCR, 126; *Direttorio*, nos. 1.2.5, 1.2.6, 1.3.3, 2.2.4, 3.3.2).

d) *Every five years, at the time and in the manner established by the Holy See*

Number 2 of the Decree *Ad Romanam Ecclesiam* of 1975,[20] to which the Directory (*Direttorio*, no. 1.2.1, note 1) refers, establishes fixed five-year periods that must be counted beginning January 1, 1976. In years ending in 1 or 6, reports are sent by the bishops of Italy, Spain, Malta, North, East, and West Africa; in years ending in 2 or 7, by the bishops in the rest of Europe and Africa; in years ending in 3 or 8, the bishops of North and Central America, the Caribbean Islands, and Oceania; in years ending in 4 or 9, the bishops of South America (except Brazil), southern Asia, and the Middle East; in years ending in 5 or 0, the bishops of Brazil and the rest of Asia.

Section 2 of c. 399 sets forth a traditional exception to the schedule of report submissions: if the year in which the bishop must submit the report coincides in full or in part with the first two years of his governance of the diocese, he is exempt from the obligation.

The competent Congregation (CB or CEP) should send in writing to the diocesan bishops the conclusions regarding their diocese (*PB* 81) that the bishop must try to put into practice as soon as possible. It is interesting to note that in the special oath of fidelity to the Apostolic See made by those promoted to the episcopate (cf. c. 380)—traditionally before the Cardinal Protodeacon—they promise to give accounts of their pastoral office to the Apostolic See, meekly to receive their mandates and counsel, and to put them into practice with maximum diligence ("Statutis temporibus vel occasione data Apostolicae Sedis rationem de pastorali meo officio reddam, eiusdemque mandata atque consilia simul obsequenter accipiam ac maximo studio perficiam" [*Formula Iurisiurandi fidelitatis ab Episcopis praestandi*, July 1, 1987]).

20. SCB, Decree *De visitatione*..., cit.

400 **§ 1. Episcopus dioecesanus, eo anno quo relationem Summo Pontifici exhibere tenetur, nisi aliter ab Apostolica Sede statutum fuerit, ad Urbem, Beatorum Apostolorum Petri et Pauli sepulcraveneraturus, accedat et Romano Pontifici se sistat.**

§ 2. Episcopus praedictae obligationi per se ipse satisfaciat, nisi legitime sit impeditus; quo in casu eidem satisfaciat per coadiutorem, si quem habeat, vel auxiliarem, aut per idoneum sacerdotem sui presbyterii, qui in sua dioecesi resideat.

§ 3. Vicarius apostolicus huic obligationi satisfacere potest per procuratorem etiam in Urbe degentem; Praefectus apostolicus hac obligatione non tenetur.

§ 1. Unless the Apostolic See has decided otherwise, in the year in which he is bound to submit the report to the Supreme Pontiff, the diocesan Bishop is to go to Rome to venerate the tombs of the Blessed Apostles Peter and Paul, and to present himself to the Roman Pontiff.

§ 2. The Bishop is to satisfy this obligation personally, unless he is lawfully impeded; in which case he is to satisfy the obligation through the coadjutor, if he has one, or the auxiliary, or a suitable priest of his presbyterium who resides in his diocese.

§ 3. A Vicar apostolic can satisfy this obligation through a proxy, even through one residing in Rome. A Prefect apostolic is not bound by this obligation.

SOURCES: § 1: c. 341 § 1; SCCong Decr. *Ad Sacra Limina*, 28 feb. 1959, 1–3 (*AAS* 51 [1979] 274); SCB Decr. *Ad Romanam Ecclesiam*, 29 iun. 1975, 2, 3, 5 (*AAS* 67 [1975] 676)
§ 2: c. 342; SCCong Decr. *Ad Sacra Limina*, 28 feb. 1959, 4 (*AAS* 51 [1959] 274)
§ 3: c. 299

CROSS REFERENCES: cc. 330–331, 333–334, 375, 381–382, 396, 399

COMMENTARY

Valentín Gómez-Iglesias C.

The ad limina Apostolorum *visit of diocesan bishops*

1. From the point of view of the historical roots and the evidence, the quinquennial report and the *ad limina* visit are incorporated harmoni-

ously (see commentary on c. 399 § 1–2). Throughout history, there have been periods in which norms and especially practice gave precedence to the report on the state of the diocese over the *ad limina* visit, which primarily became an opportunity to meet to comment on the quinquennial report and receive instructions in this regard. At present, with emphasis on the pastoral and service nature of the exercise of the episcopal "triple *munus*," the meaning of service (*diakonia*) of the *munus petrinum* with respect to the particular churches and their pastors is also especially highlighted. The pastoral meaning and the meaning of reciprocal communion of the *ad limina* visits that serve to "manifest the communion that authenticates the mission"[1] of the pastors are stressed. Although the visits entail and include these quinquennial reports, the reports are geared to the visits, going beyond the administrative aspects in order to go into the deepest aspect of the mystery of the Church: the mystery of communion. We are faced with one of the most characteristic manifestations of the Roman Pontiff's care for all the churches, whose ministry "should not only be seen as a 'global' service that reaches each particular Church from 'outside', *but rather as belonging to the essence of each particular Church from 'inside.'*"[2] As has been very appropriately highlighted, in the *ad limina* visit, "an impressive 'exchange of gifts' takes place between what is particular, that is, local, in the Church and what is universal, according to the principle of catholicity."[3]

2. The following are the current norms in the Latin Church concerning the *ad limina* visit:

a) c. 400;

b) *PB* 28–32; 81 and 89 *in fine*;

c) *RGCR* 142;

d) *Direttorio per la visita ad limina*;

e) Decree *Ad Romanam Ecclesiam*, no. 2.[4]

The following are current norms in the Eastern Catholic Churches on the *ad limina* visit:

a) c. 208 *CCEO*;

b) *PB* 28–32 and 58 § 1 *in fine*;

c) *RGCR* 139–142.

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1. JOHN PAUL II, "Discurso a los Obispos suizos en visita 'ad limina Apostolorum,'" March 6, 1987, no. 2, in *Insegnamenti di Giovanni Paolo II*, X, 1 (1987), p. 511.
2. Idem, "Discurso a los Obispos de los Estados Unidos de América," September 16, 1987, no. 4, ibid. X, 3 (1987), p. 556. Also cf. *Communionis notio* 13.
3. Card. B. GANTIN, "Significato della visita 'ad limina,'" in *L'Osservatore Romano*, July 15, 1988, p. 1.
4. SCB, Decr. *De visitatione Ss. Liminum deque relationibus dioecesanis*, June 29, 1975, in *AAS* 67 (1975), pp. 674–675.

Canon 400, § 1 establishes a) the obligation of the diocesan bishop to travel to Rome, unless otherwise provided by the Apostolic See; b) the year in which the quinquennial report must be submitted; c) the veneration of the tombs of the Apostles; d) the meeting with the Roman Pontiff.

a) *Obligation to make the* ad limina *visit*

The obligation falls to the diocesan bishop (c. 400 § 1) and, therefore, to those who are equivalent to him in law (cf. c. 381 § 2). The military ordinary is obligated to make the *ad limina* visit under the terms established in §§ 1 and 2 of c. 400 (*SMC* XII). The Apostolic prefect does not have the obligation to do so (c. 400 § 3). The obligation to make the visit is strictly personal, unless he is legitimately impeded, in which case the bishop will do so through a coadjutor if he has one, or the auxiliary, or a suitable priest of his presbyterate who resides in the diocese (c. 400 § 2). The vicar apostolic can fulfill this obligation through a proxy, even through one residing in Rome (c. 400 § 3). The preceding c. 342 *CIC*/1917 was less stringent; the bishop could satisfy the obligation either personally or through his coadjutor if he had one, and even, for just causes approved by the Holy See, through a suitable priest residing in the diocese.[5]

b) *The year in which the report regarding the state of the division must be presented*

Every five years, pursuant to the time and order established by the Holy See for submitting the report on the state of their dioceses, bishops will make the *ad limina* visit (cf. c. 399). However, according to the provisions of § 2 of c. 399, there is no obligation to submit the quinquennial report when the year set for it coincides in full or in part with the first two years of the governance of the diocese, and since the *ad limina* visit must be made in the year in which the report is submitted, the visit is also not obligatory in that case. The preceding c. 341 *CIC*/1917 § 2 authorized the bishops outside of Europe to make the *ad limina* visit once every other five-year period, that is, once every ten years, but this authorization is not included in the current c. 400.

c) *Veneration at the tombs of St. Peter and St. Paul*

The *ad limina* visit is not purely an administrative procedure consisting of compliance with a ritual, protocol, and juridical obligation (*Direttorio*, I); it entails an ecclesiology and translates it into concrete acts; it is an applied ecclesiology.[6] Veneration and prayer at the tombs of St. Peter and St. Paul acquire a sacred meaning (*PB* Appendix I, no. 6). The pilgrimage to the *trofei* of the Apostles, practiced since ancient Chris-

5. Regarding the theological significance of the requirement that the Bishop personally satisfy the obligation of the visit, cf. E. BAURA, "Note al Direttorio per la visita 'ad limina'," in *Ius Ecclesiae* 1 (1989), p. 752.

6. Card. J. RATZINGER, "Nota teologica sulla visita 'ad limina,'" in CB, *Direttorio per la visita "ad limina"* (Vatican City 1988), p. 16.

tianity, expresses "the unity of the Church, founded by the Lord on the Apostles and built on St. Peter, its Head, with Jesus Christ himself as the cornerstone of his 'gospel' of salvation for all people" (*Direttorio*, II).

The *ad limina* visit requires preparation (*PB* 31; *RGCR* 140). *Remote preparation* includes a time of reflection and prayer, the drafting and submission of the quinquennial report, and collaboration and contacts with the pontifical representative who establishes the calendar that must be submitted for approval to the pope (*Direttorio*, no. 1). *Proximate preparation* includes the preliminary agreements with the special Office of Coordination that exists in the Congregation for Bishops, which also collaborates with the offices of the *ad limina* visit of the Congregations for the Eastern Churches and for the Evangelization of Peoples for the respective *ad limina* visits within their competence. The Office of Coordination, according to the Prefecture of the Pontifical Household, establishes the dates as well as the details of the visit (*Direttorio*, no. 2).

The culminating moment of the visit is the pilgrimage, veneration, and prayer at the tomb of the Princes of the Apostles. The most important act is the Holy Mass held in the Basilicas of St. Peter and St. Paul outside the walls. It is recommended that any priests or faithful of his diocese who may accompany the bishop on the *ad limina* visit also participate. Since 1988, there has been a special ritual for the liturgy of the *ad limina* visit (*Direttorio*, no. 3.1).[7]

d) *Meeting with the Roman Pontiff*

The meeting with the successor of Peter constitutes "the culmination of the relationship between the pastors of each particular Church with the Roman Pontiff. For he meets his brothers in the episcopate, and deals with matters concerning the good of the Churches and the bishops' role as shepherds, and he confirms and supports them in faith and charity. This strengthens the bonds of hierarchical communion and openly manifests the catholicity of the Church and the unity of the Episcopal College" (*PB* 29).

The visit has a personal meaning, inasmuch as each bishop meets the Successor of Peter for a personal discussion on the date and time set by the Prefecture of the Pontifical Household. "During the *ad limina* visit, two men stand face to face, the bishop of a certain particular Church and the bishop of Rome, who is also the successor of Peter. Both carry on their shoulders the burden of office from which they cannot relieve themselves, but they are not at all divided one from the other, for both of them in their own way represent, and must represent, the sum total of the faithful, the whole of the Church, and the sum total of the bishops, which together constitute the only 'we and us' in the body of Christ" (*PB* Appendix I, no. 3). When possible, a

7. Regarding the liturgy of the visit "ad limina," cf. V. CÁRCEL ORTÍ, "Legislazione e magistero di Giovanni Paolo II sulla visita 'ad limina Apostolorum,'" in *Monitor Ecclesiasticus* 118 (1993), pp. 464–466.

community celebration or collective meeting is held with the pope and the bishops making the visit (*Direttorio* no. 3.2).

Canon 400 speaks exclusively of a meeting with the Roman Pontiff, but the visits "also concern the dicasteries of the Roman Curia. However, through these visits a helpful dialogue between the bishops and the Apostolic See is increased and deepened, information is shared, advice and timely suggestions are brought forward for the greater good and progress of the Churches and for the observance of the common discipline of the Church" (*PB* 30; cf. *RGCR* 141). The visit also has a communal significance, given that the bishops hold discussions with the heads of the various congregations, councils, and offices of the Roman Curia (*PB* Appendix I, no. 6). Responses from the heads of the dicasteries "although they have no official value until they are written and formalized in the usual manner by the Roman Curia, may nonetheless serve as information, counsel, orientation and guidance in the general conduct and solutions to particular problems in which it is appropriate to apply practical norms recognized by experience and canonical tradition" (*Direttorio*, no. 3.3.6).

Bishops can also make contact with the ecclesiastical and pastoral situation in Rome, such as parishes, cultural centers and welfare centers, the proper national church, any personal parishes, and, possibly, the church of the cardinalatial title (*Direttorio*, no. 3.4).

Once the *ad limina* visit is completed, the Congregation for the Bishops[8] "transmits to the diocesan bishops the conclusions relative to their dioceses," (*PB* 81) which the bishop will receive with meekness and will put into practice with much diligence (cf. c. 399 *in fine*).

In addition to the deep meaning of the union with Peter possessed by this institute, the *ad limina* visit constitutes an effective instrument for the exercise of the *munus petrinum* with respect to the particular churches, with instructional elements (discourses by the pope in audiences during those visits) as well as governance issues. The bishops as well as those working in the Roman Curia must avoid reducing these times to mere formalistic compliance. They must seek to delve into the problems of the diocese with eagerness in order to obtain workable results at the governance level, both on the initiative of the Apostolic See as well as through the efforts of the diocesan bishop to whom suggestions and counsel will be very useful.

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8. Regarding the competencies of the CB about the function of the Episcopal ministry, cf. M. COSTALUNGA, *La Congregazione per i Vescovi*, in P.A. BONNET-C. GULLO (Eds.), *La Curia Romana nella Cost. Ap. "Pastor Bonus"* (Vatican City 1990), pp. 289–293; V. GÓMEZ-IGLESIAS, "La Congregación para los Obispos," in *Ius Canonicum* 31 (1991), pp. 368–370.

Naturally, contact between bishops and the Holy See must be regular. With the current means of communication, it would not make sense to limit dialogue to these particular moments. The *ad limina* visits are but a minimum requirement which nonetheless retain all their meaning, their immense usefulness, and their practical efficacy.

401 **§ 1. Episcopus dioecesanus, qui septuagesimum quintum aetatis annum expleverit, rogatur ut renuntiationem ab officio exhibeat Summo Pontifici, qui omnibus inspectis adiunctis providebit.**

§ 2. Enixe rogatur Episcopus dioecesanus, qui ob infirmam valetudinem aliamve gravem causam officio suo adimplendo minus aptus evaserit, ut renuntiationem ab officio exhibeat.

§ 1. A diocesan Bishop who has completed his seventy-fifth year of age is requested to offer his resignation from office to the Supreme Pontiff, who, taking all the circumstances into account, will make provision accordingly.

§ 2. A diocesan Bishop who, because of illness or some other grave reason, has become unsuited for the fulfilment of his office, is earnestly requested to offer his resignation from office.

SOURCES: § 1: *CD* 21; *ES* I, 11
§ 2: *CD* 21; *ES* I, 11

CROSS REFERENCES: cc. 187–189, 195, 354, 402, 411, 416–417, 538 § 3

COMMENTARY

Valentín Gómez-Iglesias C.

The resignation of a diocesan bishop because of age, illness, or other grave reasons

1. Canons 401 and 402 were organically composed to regulate the diocesan bishop's retirement through an accepted resignation and the juridical status of the resigning bishop.

Similar to the provisions for Cardinals heading the dicasteries and other permanent institutes of the Roman Curia and of Vatican City (cf. c. 354) and for parish priests (cf. c. 538 § 3), paragraph 1 of c. 401 also asks diocesan bishops who are seventy-five years old to tender their resignation from office to the Supreme Pontiff, who will make provision, taking into account all the circumstances.

In the *Schema* of 1980, the obligation for a bishop to offer his resignation was set forth in terms of an obligation ("*renuntiationem ab officio exhibeat*") and, as an obligation, it was situated together with the tradi-

tional obligations of the diocesan bishop, such as residence, pastoral visit, quinquennial report, and *ad limina* visit. It was Cardinals Siri and Razafimahatrata who brought to the attention of the Commission for the Revision of the Code that in the decree *Christus Dominus* 21, the resignation age was a recommendation and not an obligation.[1] In fact, "As the pastoral office of bishops is so important and onerous, diocesan bishops and others whose juridical position corresponds to theirs are earnestly requested to resign from their office if on account of advanced age or from any other grave cause they become less able to carry out their duties. This they should do on their own initiative or when invited to do so by the competent authority" (*CD* 21).[2] And *Ecclesiae Santae* I, 11—in executing *Christus Dominus* 21—earnestly requested that, no later than when they turn seventy-five years of age, they are on their own initiative to submit their resignation from office to the competent authority, who will make provision, taking into account all the circumstances. The Commission for the Revision of the Code placed before the phrase "*renuntiationem ab officio exhibeat*" the words "*rogantur ut*," just as it is stated in the current c. 401.[3]

It is an innovation in Church legislation, inasmuch as neither in the *ius vetus* nor in the *CIC*/1917 was age one of the causes for the bishop's resignation, although popes did receive some resignations due to age.[4] Coadjutors and auxiliary bishops are also invited to submit their resignation to the Roman Pontiff once they turn seventy-five (cf. c. 411). Also the heads and secretaries of the dicasteries and other institutes of the Roman Curia, and any who are equivalent to them, retire from their office when they reach age seventy-five (*RGCR* 41 § 2).

2. Moreover, paragraph 2 of c. 401—also in keeping with *Christus Dominus* 21—earnestly asks diocesan bishops to offer their resignation from office if, because of illness or some other grave reason, their capacity to fulfill their office is diminished. In these cases—illness or grave reason—the request is more insistent; paragraph 2 does not simply use the word *rogatur* as in paragraph 1, but the phrase "*enixe rogatur*" ("earnestly requests"). This paragraph is also applied to coadjutor and auxiliary bishops (cf. c. 411).

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1. Cf. *Comm.* 14 (1982), p. 208.
2. Regarding the resignation of the bishop because of age as discussed in Vatican Council II, cf. H.-M. LEGRAND, "Nature de l'Église particulière et rôle de l'Évêque dans l'Église," in *La charge pastorale des Évêques* (Paris 1969), pp. 168–173.
3. *Comm.* 14 (1982), p. 208.
4. P.G. CARON, *La rinuncia all'ufficio ecclesiastico nella storia del diritto canonico dall'età apostolica alla Riforma cattolica* (Milan 1946), pp. 189–190.

3. The resignation mentioned in c. 401 does not take effect *ipso iure*, but is subjected to acceptance on the part of the Roman Pontiff, who will make provision, taking into account all the circumstances (c. 401 § 1).[5]

The following general conditions that apply for all resignations prescribed by the current *CIC* also apply to this resignation requiring acceptance: a) as an *ad validitatem* requirement, it must be presented in writing or orally before two witnesses (cf. c. 189 § 1); b) the Roman Pontiff must not accept any resignation that is not based on a just and proportionate reason (cf. c. 189 § 2); c) a resignation that needs acceptance has no force unless it is accepted within three months (cf. cc. 57, 189 § 3); d) until a resignation is accepted, it may be revoked by the person resigning (cf. c. 189 § 4); e) acceptance of the resignation must be communicated as soon as possible to the person resigning and to those who have any right in regard to the provision of the office (cf. c. 184 § 3); f) from the time in which the diocesan bishop is notified of acceptance of his resignation, the episcopal see is vacant (cf. cc. 416–417).

The *Codex canonum Ecclesiarum orientalium* (*CCEO*) regulates the matter of the diocesan bishop's resignation in c. 219 in a manner quite like c. 401 *CIC*, although in some cases the resignation is offered to the Patriarch and in others to the Roman Pontiff.

4. With this canon, a general method is established for avoiding excessive age of the bishop (§ 1), or illness and other reasons (§ 2) from entailing serious diminishment of the capacity to fulfill the office or episcopal ministry. This method is established not as a juridical obligation of the diocesan bishop, but rather as a request to the bishop, which, in the event of illness or grave reasons becomes more compelling (*enixe*), such that its execution is in the hands of the Supreme Pontiff, who will decide, taking into account all circumstances on a case-by-case basis. This canon is a good example of a general prescription on the basis of legal presumptions, conveniently adaptable in its application through the wise judgment of the supreme authority. The text of this canon highlights a fundamental aspect of all authority in the people of God, its aspect of *diakonia*, of service.

5. Cf. F. FALCHI, "I procedimenti di dimissione dei Vescovi," in *Ministero episcopale e dinamica istituzionale* (Bologna 1981), pp. 129–177.

402 **§ 1. Episcopus, cuius renuntiatio ab officio acceptata fuerit, titulum emeriti suae dioecesis retinet, atque habitationis sedem, si id exoptet, in ipsa dioecesi servare potest, nisi certis in casibus ob specialia adiuncta ab Apostolica Sede aliter provideatur.**

§ 2. Episcoporum conferentia curare debet ut congruae et dignae Episcopi renuntiantis sustentationi provideatur, attenta quidem primaria obligatione, qua tenetur dioecesis cui ipse inservivit.

§ 1. A Bishop whose resignation from office has been accepted, acquires the title "emeritus" of his diocese. If he so wishes, he may have a residence in the diocese unless, because of special circumstances in certain cases, the Apostolic See provides otherwise.

§ 2. The bishops' Conference must ensure that suitable and worthy provision is made for the upkeep of a Bishop who has resigned, bearing in mind the primary obligation which falls on the diocese which he served.

SOURCES: § 1: *CD* 21; *ES* I, 11; SCB Let. (Prot., 335/67), 7 nov. 1970; SCB Let. (Prot. 335/67), 31 aug. 1976
§ 2: *CD* 21; *ES* I, 11

CROSS REFERENCES: cc. 185, 195, 376, 401, 411, 416–417, 538 § 3, 707, 1350

COMMENTARY

Valentín Gómez-Iglesias C.

Juridical situation of the resigned or emeritus bishop

1. From the time the diocesan bishop receives notification according to law that the Roman Pontiff has accepted his resignation (cf. c. 401), the episcopal see becomes vacant and the power of the resigned bishop ceases to be exercised over the portion of the people of God entrusted to him (cf. cc. 416–417; also c. 381). Therefore, his status as diocesan bishop changes to the juridical status of titular bishop (cf. c. 376).[1]

1. Regarding the status of the titular bishop with respect to the bishop who has accepted his resignation, cf. J.L. GUTIÉRREZ, "Organización jerárquica de la Iglesia," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 358.

With regard to the title or name with which he is designated, no diocese is attributed to him, but, according to c. 185, any person who has ceased from an office by means of an accepted resignation the title of "resigned" or "emeritus" can be conferred. Canon 402 § 1 establishes that he retains the title of "resigned bishop" or "emeritus" of the diocese that he had governed until the time of notice of acceptance of his resignation. In this sense, the Congregation for Bishops had declared in the *Letter* of November 7, 1970 (Prot. 335/67) that the Roman Pontiff, in an audience the preceding October 31, had provided that from then on a titular church would not be assigned to resigned diocesan bishops of the Latin rite, as was the custom, but that they would be still referred to by the see from which they had resigned.[2]

The title "resigned" or "emeritus" is merely honorary and does not grant any juridical authority as such over the office of the diocesan bishop. However, *Ecclesiae Sanctae* I, 11 established that the resigning bishop could retain, if he so desired, a residence in his diocese, and the diocese must ensure his suitable and worthy provision. At the same time, it established as a duty of the bishops' conference the general determination of the manner by which the diocese must fulfill that obligation. Following that prescription of *Ecclesiae Sanctae*, c. 402 § 1 contemplates the possibility that the resigning bishop—if he chooses—may continue to reside in the diocese, unless, in certain cases, the Holy See provides otherwise.

Piñero raises the issue of the actual scope of the phrase "habitationis sedem ... servare potest." At first glance, it could seem that, if he wishes, the bishop may remain in the same episcopal residence, but it does not seem that this is the meaning of the norm. Neither could it be said that it is the "right to continue to reside in the diocese, because that it not denied anywhere, and it is a generic right of the person." The aforementioned writer concludes that it should be understood that the diocese must provide lodging for the resigning bishop, by analogy with paragraph 3 of c. 538, which prescribes that housing must be provided to the retired parish priest (cf. c. 538 § 3).[3]

Moreover, the resigning religious bishop, contrary to requirements in the preceding discipline (c. 629 § 1 *CIC*/1917), which forced him to return to the religious and live in whichever home he wanted within those of his religious, now may choose to reside outside of one of those houses, unless the Apostolic See provides otherwise (cf. c. 707 § 1). If he does returns to

2. Cf. X. OCHOA, *Leges Ecclesiae post CIC editae*, IV (Rome 1974), col. 5911. Also cf. *Comm.* 9 (1977), pp. 223–224.
3. J.M. PIÑERO CARRIÓN, *La ley de la Iglesia. Instituciones canónicas*, v. I (Madrid 1985), p. 452.

the same institute, he does not enjoy—at least, by common law—an active or passive voice therein.[4]

2. In turn, c. 402 § 2 prescribes the principal obligation, which is incumbent upon the diocese in which the bishop exercised his episcopal ministry, to ensure that suitable and worthy provision is made for him after he resigns. This duty falls as a subsidiary to the bishops' conference, which must provide whatever is necessary in order to guarantee this support. In the process of the development of this section, there was a shift from a formula similar to that of the aforementioned *Ecclesiae Sanctae* I, 11, to the broader current wording. The bishops' conference must now not only provide norms for determining the manner in which the diocese in which the resigned bishop served must ensure his suitable and worthy support, but must guarantee it in an appropriate manner. They must make up for any economic difficulties of the diocese or determine another type of support.[5] The same prescription of c. 402 is applied to religious resigned bishops, unless the same institute wishes to handle their support (cf. c. 707 § 2). It is also applied to coadjutor and auxiliary bishops (cf. c. 411).[6]

The bishops' conferences have in some cases specified the method for guaranteeing support for the resigned bishop.[7] The most customary norms establish that a) if he served as a diocesan bishop in just one diocese, this diocese must provide it all; b) if he served in more than one, they must do it proportionally; c) in cases of an inability due to scarce economic resources or other reasons, the bishops' Conference must provide it directly.

In the process of the development of c. 402 § 2, a consultor stated his opinion that support should be provided to the resigned bishop when the bishop has resigned due to age, illness or other grave reasons (c. 401), but that this obligation will not exist if the bishop has been removed from the diocese because of a crime. All the consultors expressed their agreement, even if it is "*de re odiosa.*"[8] However, it seems that this official opinion must be supplemented. If the removal of the bishop is *ipso iure*, that is, for a crime that has been punished with the penalty of loss of the clerical state or by declaration of the competent authority that the interested party

4. CPI, *Interpretación auténtica de los cánones 705–707*, April 29, 1986, in *AAS* 78 (1986), p. 1324.

5. Cf. *Comm.* 18 (1986), pp. 156–157.

6. Regarding pensions of the Bishops who are directly under the Dicastery and the other institutes of the Roman Curia, and entitlements in general, of which the Holy See is in charge, cf. mp *De pensionibus denuo ordinandis*, September 8, 1992, in *AAS* 84 (1992), pp. 1034–1053.

7. Cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopali complementare al C.I.C.* (Milan 1990), pp. 78, 100, 113, 153, 210, 287, 329, 339, 457, 481, 600. (Editor's Note: For complementary norms promulgated by English language Conferences of Bishops, see Volume V, Appendix 3.)

8. Cf. *Comm.* 18 (1986), p. 157.

has publicly defected from the Catholic faith or from communion with the Church, or by declaration of the competent authority that he has attempted marriage, although only a civil one (cf. c. 194), then there is no juridical obligation to ensure suitable and worthy provision, while in all other possible cases of removal, there would be a juridical obligation at least for an appropriate period of time (cf. c. 195). The fact that there is no juridical obligation does not exclude the obligation, even grave obligation imposed by charity, to ensure provision. It would be necessary to also take into account c. 1350; in the case of the imposition of penalties on a cleric for commission of a crime, "care must always be taken that he does not lack what is necessary for his worthy support" (cf. c. 1350 § 1). Inasmuch as the right to worthy support is one of the rights making up the juridical patrimony of the clergy (cf. c. 281), only removal for a crime entailing expulsion from clerical status will annul said right and the resulting duty in this case. Charity may still be morally binding—including *sub gravi*—"to provide in the best way possible if a person is truly in need because he has been dismissed from the clerical state" (cf. c. 1350 § 2).

It should be added that the juridical situation of the resigned or emeritus bishop is regulated in a manner similar to that of c. 402 in parallel texts of the *CCEO* (cc. 62, 211, 218).

3. Although the resigned or emeritus bishop has no juridical authority over the diocesan office as such, he continues to be a bishop. Due to his continued episcopal status, and given the hierarchical communion with the head and the other members of the Episcopal College, he is an integral part thereof—a subject of the supreme, full power over the Church—(cf. c. 336). From his status as a member of the College, precise juridical situations are derived (rights and obligations). Among these are a) the right-obligation to participate in Ecumenical Councils (cf. c. 339 § 1); b) the right-obligation to collegially exercise the supreme power of the Church (cf. cc. 337 § 1 and 339 § 1); c) the right-obligation to collaborate with the Roman Pontiff (cf. *DPMB* 44–49); d) the right-obligation to collaborate with the other bishops (*DPMB* 50–54); e) the faculty to hear confessions in any place, unless the diocesan bishop objects in a particular case (cf. c. 967 § 1); f) the faculty to remit in a sacramental confession an undeclared penalty *latae sententiae* (cf. c. 1355 § 2); g) the right to preach the word of God anywhere, unless in particular situations to which the local bishop expressly objects (cf. c. 763).[9]

In 1988, the Congregation for Bishops, welcoming a suggestion from the Secretary of State, called a meeting in an attempt to seek suitable means by which the resigned bishops can still render useful services to the Church. The following conclusions in the form of proposals were ap-

9. Cf. J.I. ARRIETA, art. "Vescovi," in *Enciclopedia Giuridica*, v. 32 (Rome 1994).

proved by the Roman Pontiff on October 29, 1988[10]: a) the dicasteries of the Roman Curia should consult them on general problems, as they consult with other bishops; b) those who are particularly competent in certain areas may be adjunct members or consultors of the dicasteries of the Roman Curia; c) they may be elected by the respective bishops' conferences to participate in the Synod of Bishops (*Motu proprio Apostolica sollicitudo*, September 15, 1965, no. VIII), in accordance with c. 346 § 1, genuinely interpreted in this sense;[11] d) if, because of the statutes, they do not participate in the Bishops' Conference with a consultative vote, they can be called upon to participate in study meetings or commissions and to send them the conference documents; e) they can be consulted in diocesan activities and initiatives; f) they should receive the diocesan Bulletin and other documents; g) the diocese will be kept informed of a bishop's economic situation to assist him if necessary.[12] To this we can add the possibility set forth in paragraph 2 of c. 443 on participating in particular councils.

The resigned bishop may play a very useful role in the life of the diocese as a living witness to what could be called diocesan tradition—which is well represented in the present denomination by retirees from the see they served—and as help and moral support for the bishop succeeding him in the particular Church. Between these two persons, there should be a special relationship of communion, characterized by respect and appreciation from the new bishop for the one who preceded him, as well as the resigned bishop's eagerness to receive in the spirit of faith and ecclesial obedience everything provided by the current pastor. The bishop emeritus must carefully avoid meddling in what are the direct and exclusive responsibilities of the diocesan bishop. Making use of the tie of special affection linking him to the former diocese, it would be appropriate to call on him whenever possible in the life of the diocese, seeking to make use of all his experience and present abilities, which would result in the good of the diocese as well as of the resigned bishop.

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10. CB, *Normae de episcopis ab officio cessantibus*, October 31, 1988, in *Comm.* 20 (1988), pp. 167–168.
11. PCILT, *Interpretación auténtica del canon 346 § 1*, October 10, 1991, in *AAS* 83 (1991), p. 1093.
12. F. FALCHI, "Nuove norme circa i vescovi dimissionari," in *Studi in memoria di P. Gismondi*, v. II (Milan 1990), pp. 31–41.

ART. 3
De Episcopis coadiutoribus et auxiliaribus

ART. 3
Coadjutor and Auxiliary Bishops

403 **§ 1. Cum pastorales dioecesis necessitates id suadeant, unus vel plures Episcopi auxiliares, petente Episcopo dioecesano, constituantur Episcopus auxiliaris iure successionis non gaudet.**

§ 2. Gravioribus in adiunctis, etiam indolis personalis, Episcopo dioecesano dari potest Episcopus auxiliaris specialibus instructus facultatibus.

§ 3. Sancta Sedes, si magis opportunum id ipsi videatur, ex officio constituere potest Episcopum coadiutorem, qui et ipse specialibus instruitur facultatibus; Episcopus coadiutor iure successionis gaudet.

§ 1. When the pastoral needs of the diocese require it, one or more auxiliary Bishops are to be appointed at the request of the diocesan Bishop. An auxiliary Bishop does not have the right of succession.

§ 2. In more serious circumstances, even of a personal nature, the diocesan Bishop may be given an auxiliary Bishop with special faculties.

§ 3. If the Holy See considers it more opportune, it can ex officio appoint a coadjutor Bishop, who also has special faculties. A coadjutor Bishop has the right of succession.

SOURCES: § 1: c. 350 § 3; SCCong Resol., 10 ian. 1920 (*AAS* 12 [1920] 41–42); *CD* 25, 26; *ES* I, 13 § 1; *DPMB* 199
§ 3: c. 350 §§ 1 et 2; *CD* 25; *ES* I, 13 § 1; *DPMB* 199; SCB Let. (Prot. 335/67), 31 aug. 1976

CROSS REFERENCES: cc. 339 § 1, 346, 375–380, 401, 443 § 1,1°, 450 § 1, 454

COMMENTARY
Remigiusz Sobanski

In spite of the fact that, according to c. 376, bishops are called "diocesan" or "titular," after art. 2, "Diocesan bishops," follows art. 3, "Coadju-

tor and Auxiliary bishops." This does not mean that all titular bishops are coadjutor or auxiliary (for example, Cardinals who are not diocesan bishops, Legates of the bishop of Rome, military bishops, and superior bishops of churches assimilated to the dioceses are not coadjutor or auxiliary bishops).

The organization of the chapter on bishops does indicate that the episcopal office (*munus*) is above all a service in a given particular church. Herein lies the ecclesiological reason for retaining the term "titular bishop" officially used since 1882.[1] The problem is that the title is fictitious; the titular bishop has neither his own church nor his own faithful. Since apostolic times there has been an unshakable principle, according to which each particular church has just one bishop at its head. Neither plurality of heads nor strictly collegial governance is allowed. According to this principle, each particular church is entrusted "to a bishop to be guided by him with the assistance of his clergy" (*CD* 11). At the same time, since Christian antiquity, at times it so happens that "the good of the people of God" requires that some of these collaborators have episcopal ordination, and that they assist the diocesan bishop in his episcopal duties (*CD* 25). History shows that the process of canonical formation of the office of the bishop always accompanied the formation of the office of coadjutor (*officium adiuvandi*). Canonical sources indicate an unquestionable tendency to limit the appointment of a coadjutor to cases of truly serious need.[2] In the Fourteenth century, the office of the auxiliary bishop came to be similar to that of present times.[3]

In Vatican Council II, the juridical position of the coadjutor and auxiliary bishops was the subject of an impassioned discussion during the debate on the *Schema* "De Episcopis ac de dioecesium regimine."[4] The doctrine adopted by the Council Fathers on the sacramental nature of the episcopate (*LG* 20) created the basis for increasing the importance of the bishops collaborating with the diocesan bishop. The main argument includes the following points: a) the fact that "episcopal ordination confers, together with the office of sanctifying, the office also of teaching and governing" (*LG* 21) and b) the titular bishops' membership in the College of Bishops. The doctrine of the episcopate conceived as a sacrament nonetheless requires the complementary development of various connected ecclesiological issues.[5] The provisions of cc. 403–411 harmonize in a

1. Cf. communication in *Archiv für katholisches Kirchenrecht* 48 (1882), p. 211.
2. "Quodsi quando ecclesiae cathedralis aut monasterii urgens necessitas aut evidens utilitas postulet, praelato dari coadiutorem," Council of Trent, *sess.* 25 of ref., c. 7.
3. *Clem.* I, 3, 5.
4. K. MÖRSDORF, in *Lexikon für Theologie und Kirche. Das Zweite Vatikanische Konzil, Konstitutionen, Dekrete und Erklärungen*, II (Freiburg-Basel-Vienna 1967), pp. 128–146.
5. W. AYMANS, "Der Leitungsdienst des Bischofs im Hinblick auf die Teilkirche. Über die bischöfliche Gewalt und ihre Ausübung aufgrund des Codex Iuris Canonici," in *Archiv für katholisches Kirchenrecht* 153 (1984), p. 40.

practical way the various sacramental and canonical aspects involved with respect to the provisions of *Christus Dominus* 25 and 26.

2. Canon 403[6] establishes three possible figures among bishops who collaborate with the diocesan bishop: a) the auxiliary bishop, b) the auxiliary bishop possessing special faculties, and c) the coadjutor bishop. The coadjutor bishop is not only given special faculties, but also always enjoys the right to succession (as established by *CD* 25). There is no longer any difference between the coadjutor given to the person of the bishop and the coadjutor given to the episcopal see (cf. c. 350 *CIC*/1917). The new organization of the figure of bishops collaborating with the diocesan bishop made the institute of the *sede plana* apostolic administrator unnecessary, and which the current Code no longer recognizes.

3. The auxiliary bishop discussed in paragraph 1 is named at the request of the diocesan bishop, who, if he believes that an auxiliary is necessary for his diocese, must propose a list of at least three of the presbyters who are most suitable for this office (c. 377 § 4). The auxiliary bishop is appointed to the diocese (not as in c. 350 *CIC*/1917, according to which he was appointed to the person of the bishop)[7] according to the provisions of the decree *Cristus Dominus* 26. This change affects his position during a vacancy in the episcopal see and after the taking of possession by the new bishop. It was acknowledged that it was pointless to specify in law the concrete pastoral needs that could give rise to the appointment of one or more auxiliary bishops.[8] Until the 1980 *schemata*, there was mention of the geographical area of the diocese, the number of its inhabitants, and other specific circumstances of pastoral care (as, for example, the large number of faithful speaking a foreign language [cf. *CD* 23]), as a result of which the diocesan bishop cannot personally fulfill his episcopal duties as required by the good of the souls. In *Christus Dominus* 25, the good of the souls was shown as the reason for appointing one or more auxiliary bishop in a diocese. The Conciliar Decree states that on certain occasions, in fact, the good of the souls does demand it; however, what occurs in certain countries, in which all of the dioceses have one or more auxiliary bishops, is not in line with the intent of *Cristus Dominus* nor with the sense of c. 403 § 1 (in certain dioceses, the appointment of an auxiliary bishop is ensured by a concordat. Thus, for example, art. 2, no. 10 of the concordat with Prussia (June 14, 1929) established auxiliary bishops for the archbishops of Cologne, of Bratislava, and Paderborn, as well as for the bishops of Trier, Munster, and Aachen).[9] In situations such as these, in-

6. Cf. *Comm.* 5 (1973), pp. 223–224; 7 (1975), pp. 161–172; 12 (1980), pp. 309–314; 19 (1987), pp. 143–145; 24 (1992), pp. 40–41.

7. The reports concerning episcopal appointments published in *AAS* until 1989 treats titular bishops as granted to the diocesan bishop; from 1991 on the tendency has been to consider them as granted to the particular church.

8. Cf. *Comm.* 12 (1980), p. 309; 24 (1992), p. 40.

9. *AAS* 21 (1929), p. 525.

stead of institutionalizing the need for always having an auxiliary, one should proceed to a new division of the diocese or a working organization within it. In particular, the large number of *confirmandi*, which would exceed the capacity of the diocesan bishop, has not been affirmed as a sufficient reason to appoint an auxiliary bishop, since the bishop can grant faculties to confirm to more than one presbyter (cf. c. 884 § 4).

4. The auxiliary bishop possessing special faculties is given to the diocesan bishop at his request or ex officio, without his request. The reasons for appointing this auxiliary bishop may lie not only in the situation of the diocese, but also in the person of the bishop. It is not so much a matter of circumstances such as age or illness (which would more appropriately call for the application of c. 401 § 2), as of obligations outside the diocese entrusted to the diocesan bishop.[10] The terms *episcopus auxiliaris regens*, *episcopus adiutor* or *adiunctus*, and *auxiliaris specialis*[11] were proposed; finally the term *auxiliaris specialibus instructus facultatibus* was adopted.

5. The name *coadjutor bishop* was reserved for a bishop not only given special faculties, but who also had the right to succession. The Holy See appoints him when "it seems necessary." This does not prevent the diocesan bishop from suggesting the appointment of a coadjutor. The reasons for appointing the coadjutor normally lie in the person of the diocesan bishop. There can also be other reasons, for example, an attempt to prevent difficulties in the future provision of the episcopal see. In accordance with the provisions of c. 401 regarding the resignation from office by the bishop, it should be acknowledged that the granting of a coadjutor bishop is exceptional.

According to the criteria of c. 376, the coadjutor bishop is counted among the titular bishops although he is not fictitiously assigned any diocese *in partibus infidelium*, but is called the coadjutor bishop of the diocese of which he will take possession.

6. According to *Cristus Dominus* 25, the granting of special faculties to the coadjutor bishop or the auxiliary bishop should be done in such a way that, on the one hand, the unity of the governance of the diocese and the authority of the diocesan bishop are maintained, and on the other hand, their activity is more effective and the dignity of the bishop is ensured.

The act of granting the auxiliary or coadjutor bishop special powers does not prevent the diocesan bishop from granting them, by special mandate, other faculties according to law. In addition to the duties they have in the particular Church to which they have been assigned in accordance

10. T.J. GREEN in J.A. CORIDEN, T.J. GREEN, D.E. HEINTSCHEL (Eds.), *The Code of Canon Law. A Text and Commentary* (New York 1985), p. 337.
11. *Comm.* 7 (1975), p. 164.

with the following canons, they also enjoy rights and obligations that are over the diocese as a result of their participation in the Episcopal College. They have the right and the obligation to take part in a universal Council with a deliberative vote (c. 339 § 1); they must be summoned and they have a deliberative vote in the particular synod (c. 443); they belong to the Bishops' Conference, in which the coadjutors have a deliberative vote (c. 454 § 1), while the auxiliaries have a deliberative or consultative vote as determined by the statutes; however, according to c. 454 § 2,[12] auxiliaries cannot be elected as the president;[13] they may be elected to take part in the general or special assembly of the Synod of Bishops (c. 346).

12. In fact, the great majority of the statutes of the European Bishops' Conferences grant auxiliary bishops a deliberative vote, except in the voting to create or to modify the statutes, in accordance with c. 454 §2. Cf. R. ASTORRI, *Gli statuti delle conferenze episcopali. I: Europa* (Padova 1987).

13. PCILT, *Respuesta de 23.4.1988*, in *AAS* 81 (1989), p. 388. Cf. R. CASTILLO LARA, "De Episcoporum Conferentiarum praesidentia," in *Comm.* 21 (1989), pp. 94–98.

404 **§ 1. Episcopus coadiutor officii sui possessionem capit, cum litteras apostolicas nominationis, per se vel per procuratorem, ostenderit Episcopo dioecesano atque collegio consultorum, praesente curiae cancellario, qui rem in acta referat.**

§ 2. Episcopus auxiliaris officii sui possessionem capit, cum litteras apostolicas nominationis ostenderit Episcopo dioecesano, praesente curiae cancellario, qui rem in acta referat.

§ 3. Quod si Episcopus dioecesanus plene sit impeditus, sufficit ut tum Episcopus coadiutor, tum Episcopus auxiliaris litteras apostolicas nominationis ostendant collegio consultorum, praesente curiae cancellario.

§ 1. The coadjutor Bishop takes possession of his office when, either personally or by proxy, he shows the apostolic letter of appointment to the diocesan Bishop and the college of consultors, in the presence of the chancellor of the curia, who makes a record of the fact.

§ 2. An auxiliary Bishop takes possession of his office when he shows his apostolic letter of appointment to the diocesan Bishop, in the presence of the chancellor of the curia, who makes a record of the fact.

§ 3. If the diocesan Bishop is wholly impeded, it is sufficient that either the coadjutor Bishop or the auxiliary Bishop show their apostolic letter of appointment to the college of consultors, in the presence of the chancellor of the curia.

SOURCES: § 1: c. 353 §§ 1 et 2
§ 2: c. 353 § 1
§ 3: c. 353 § 3

CROSS REFERENCES: cc. 145 § 2; 379; 380; 403, 419; 422; 833,3°

COMMENTARY

Remigiusz Sobanski

Just as in canons 379, 380, 382, and 418, the term *possessionem capere* is used. The taking of possession of the office is accomplished by presenting the apostolic letter of appointment: from the coadjutor to the diocesan bishop and to the college of consultors; from the auxiliary

bishop to the diocesan bishop. The requirement that the coadjutor submit the letter to the college of consultors is motivated by the situation of the coadjutor in the event of a vacancy in the episcopal see (cc. 419 and 421 § 1). In a diocese that has a coadjutor bishop, there cannot be a vacancy in the apostolic see, and therefore the respective faculties of the college of consultors do not come into play. It devolves upon the diocesan bishop to summon the college of consultors and to call the chancellor to record of the act. All the terms established in c. 382 § 2 must be complied with: four months from when the apostolic letter is received if he does not yet have episcopal ordination; two months if he already does.

In the event that the diocesan bishop is wholly impeded, the coadjutor bishop or the auxiliary bishop presents the letter of appointment to the college of consultors, who then summon the senior consultor by ordination (c. 502 § 2). The chancellor then records the act (if there are insurmountable obstacles, cf. c. 412).

Before taking possession of the office, the coadjutor bishop and the auxiliary bishop must receive episcopal ordination (c. 379), make the profession of the faith, and swear the oath of fidelity to the Apostolic See (c. 380). If, before the taking of possession, there is a vacancy in the episcopal see, 1) the auxiliary bishop presents the letters to the college of consultors or to the administrator of the diocese, 2) the auxiliary bishop in question in c. 403 § 2 presents the matter to the Apostolic See, and 3) with respect to the coadjutor, cf. the commentary on c. 409.

With respect to the question of whether the coadjutor bishop or the auxiliary bishop holds an office in the juridical sense,[1] and, consequently, if it is proper to speak in c. 404 of the "taking of possession of the office," it should be noted that:

1) Canons 403–411 determine the principles governing the constitution of the coadjutor bishop or the auxiliary bishop and their functions (*munus*) in a fixed manner, independent of the subject to which they are entrusted. The main duties that result from these functions and the faculties allowing them to be fulfilled are determined by law through the office they must receive (c. 406). These faculties ensure the minimum number of obligations and rights, indispensable through constitution of the office. Law, with the indications included in cc. 405, 407, and 408, completes that fundamental basis, which can also be supplemented by the diocesan bishop with faculties granted by special mandate.

2. With the appointment of a coadjutor bishop or an auxiliary bishop for a given diocese or for a given diocesan bishop, the scope of their com-

1. K. MÖRSDORF, in *Lexikon für Theologie und Kirche. Das Zweite Vatikanische Konzil, Konstitutionen, Dekrete und Erklärungen*, II (Freiburg-Basel-Vienna 1967), p. 196.

petencies is established. Whereas the office of the auxiliary does not require a special act of erection, but begins to exist in the specific diocese when it is conferred (cf. c. 145 § 2), the competencies assigned thereto come from those of the principal office to which the auxiliary renders assistance. According to c. 145 § 1, the important element of stability does not involve the concrete office, but the office determined by law, which is conferred in certain circumstances.

405 **§ 1. Episcopus coadiutor, itemque Episcopus auxiliaris, obligationes et iura habent quae determinantur praescriptis canonum qui sequuntur, atque in litteris suae nominationis definiuntur.**

§ 2. Episcopus coadiutor et Episcopus auxiliaris, de quo in can. 403, § 2, Episcopo dioecesano in universo dioecesis regimine adstant atque eiusdem absentis vel impedit vices supplent.

§ 1. The coadjutor Bishop and the auxiliary Bishop have the obligations and the rights which are determined by the provisions of the following canons and defined in their letters of appointment.

§ 2. The coadjutor Bishop, or the auxiliary Bishop mentioned in can. 403 § 2, assists the diocesan Bishop in the entire governance of the diocese, and takes his place when he is absent or impeded.

SOURCES: § 1: c. 351 §§ 1 et 2; *CD* 25, 26; *ES* I, 13
§ 2: c. 351 § 2; *CD* 25, 26; *ES* I, 13

CROSS REFERENCES: cc. 375, 403

COMMENTARY

Remigiusz Sobanski

This canon presents a general provision on the rights and obligations of the coadjutor bishop and the auxiliary bishop. These rights and obligations are described and determined by the following canons (406–408) and by the letters of appointment. These letters only prescribe the rights and obligations of the auxiliary bishop discussed in c. 403 § 2, and of the coadjutor bishop. In this way, they occupy a different juridical position from that of the "common" auxiliary bishop. The coadjutor also becomes the titular bishop of the diocese of which he will take possession in the future. The auxiliary bishop discussed in c. 403 § 2, as well as the coadjutor bishop, must assist the bishop in the entire governance of the diocese, but in such a way as to not diminish the unity of governance. The diocesan bishop cannot lessen the authority granted in the letters of appointment of the auxiliary bishop. In conflicting situations that would threaten the unity of the diocese, the diocesan bishop can temporarily suspend the coadjutor

bishop or the auxiliary bishop in their functions, at the same time submitting the matter to the Holy See.[1]

The faculties contained in the letters of appointment are delegated powers. They are not found in law nor in the rights or obligations of auxiliary and coadjutor bishops (except for the right to succession), but result from the office which, according to c. 406, the diocesan bishop must grant them. Thus, they have the right to this office. The provisions of the following canons (407–408) are general indications. Neither the auxiliary bishop nor the coadjutor bishop has an office to which a certain scope of power is directly tied. In fact, the auxiliary bishop is the titular of a non-existent diocese, and the coadjutor bishop is the titular of the diocese of which he will take possession in the future. The determination of the rights and obligations of auxiliary bishops and coadjutor bishops must take into consideration two important premises. The first is the fact that the diocesan bishop is the pastor and governor of the diocese. The second is that all bishops, including titular bishops, belong to the Episcopal College. Titular bishops are also "constituted pastors in the Church, to be teachers of doctrine priests of sacred worship and the ministers of governance" (c. 375 § 1).

From the position of the titular bishop in the Episcopal College, one cannot directly infer the rights and obligations of auxiliary bishops in particular churches. The determination of such rights and obligations only results from the determination of their participation in the work of the diocesan bishop, by mandate of the Holy See, by mandate of the diocesan bishop, or by the offices that must be granted to them. In this way, the duties in which the bishops participate by virtue of consecration are brought up to date (*LG* 21, 2; *pen* 2).

1. K. MÖRSDORF, in *Lexikon für Theologie und Kirche. Das Zweite Vatikanische Konzil, Konstitutionen, Dekrete und Erklärungen*, II (Freiburg-Basel-Vienna 1967), p. 196.

407 **§ 1. Ut quam maxime praesenti et futuro dioecesis bono faveatur, Episcopus dioecesanus, coadiutor atque Episcopus auxiliaris de quo in can. 403, § 2, in rebus maioris momenti sese invicem consulant.**

§ 2. Episcopus dioecesanus in perpendendis causis maioris momenti, praesertim indolis pastoralis, Episcopos auxiliares prae ceteris consulere velit.

§ 3. Episcopus coadiutor et Episcopus auxiliaris, quippe qui in partem sollicitudinis Episcopi dioecesani vocati sint, munia sua ita exerceant, ut concordi cum ipso opera et animo procedant.

§ 1. For the greatest present and future good of the diocese, the diocesan Bishop, the coadjutor and the auxiliary Bishop mentioned in can. 403 § 2, are to consult with each other on matters of greater importance.

§ 2. In assessing matters of greater importance, particularly those of a pastoral nature, the diocesan Bishop ought to consult the auxiliary bishops before all others.

§ 3. The coadjutor Bishop and the auxiliary Bishop, since they are called to share in the cares of the diocesan Bishop, should so exercise their office that they act and think in accord with him.

SOURCES: § 1: *CD* 26; *DPMB* 199
§ 2: *CD* 26
§ 3: *CD* 25

CROSS REFERENCES: c. 403

COMMENTARY

Remigiusz Sobanski

The provision of this canon attempts to establish a way of proceeding that would effectively maintain unity of governance in the diocese, which is in the hands of the diocesan bishop, as well as the mutual responsibility of the coadjutor bishop and the auxiliary bishops. The diocesan bishop, the coadjutor bishop, and the auxiliary bishops do not constitute a collegial body, but must exercise their functions according to a collegial mind. Acting with a collegial mind does not mean that the acts are collegial in the juridical sense discussed in c. 119. Consultation is not a condition for the validity of acts.

The provision of the canon concerns the diocesan bishop as well as the coadjutor bishop and the auxiliary bishops according to the Decree *Christus Dominus* 26.

Paragraph 1 entrusts to the diocesan bishop, the coadjutor bishop, and the auxiliary bishop discussed in c. 403 § 2 mutual consultation on matters of major importance. Consultation means asking for advice, but not for consent. It is a mutual obligation: the diocesan bishop must ask advice from the coadjutor bishop or the auxiliary bishop given special faculties, and vice versa. If the letters of appointment of the coadjutor bishop or the auxiliary bishop do not contain any faculties that may be exercised independently of the diocesan bishop, they are bound by the diocesan bishop's instructions. When they possess such faculties, they must consult the diocesan bishop. The diocesan bishop must take and fulfill his initiatives in such as way that "it facilitates the future pastoral task of the coadjutor" (*DPMB* 199). The importance of matters must be assessed with regard to the present and future good of the diocese. Maintaining unity today facilitates maintaining continuity in the future. Important matters are, above all, those for which the coadjutor bishop and the auxiliary bishop have special faculties. The majority of the matters for which the vicar general needs a special mandate also fits into this vision.[1]

Consultation on important matters by the diocesan bishop with the "ordinary" auxiliary bishop is advisable. During the drafting of the code, the difference in value between a consultation between the diocesan bishop and the coadjutor bishop and with the auxiliary bishop was clearly stressed. This is due not only to the fact that *Christus Dominus*, which provides (*ne omittant*) for consultation between the diocesan bishop and the coadjutor bishop, does not mention consultation with the auxiliary bishop. Consultation with the former is necessary, but with the latter it is merely appropriate.[2] The consultation concerns, in particular, pastoral problems, which means that c. 407 § 2 emphasizes more consultation on pastoral matters than on matters concerning the administration of the diocese (cf. c. 409). As a vicar general or an episcopal vicar (c. 406 § 2), the auxiliary bishop must inform the diocesan bishop on the more important matters (c. 480). This information supposes the presentation of his point of view. Whereas this point of view refers mostly to administrative matters (cf. c. 473 § 1), pastoral matters were stressed as the object of the consultation. The consultation includes the planning as well as the organization of pastoral activity (cf. *DPMB* 199).

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1. In order to determine which ones are the "matters of greater moment," the cases in which the Law requires the bishop to hear the opinion of the Presbyteral Counsel can be very instructive: cc. 461 § 1, 515 § 2, 531, 1215 § 2, 1222 § 2, 1263. According to c. 500 § 2 the bishop should hear the opinion of the Presbyteral Counsel "in matters of more serious moment."
2. *Comm.* 24 (1992), p. 40.

The consultation consists of asking for advice. It is appropriate for the diocesan bishop to consult first of all with the auxiliary bishops, and also when the law requires that he hear the opinion of other persons or of a college. Auxiliary bishops, if there are more than two, do not constitute any juridical council (neither do they constitute the episcopal council, discussed in c. 473 § 4, because vicar generals and episcopal vicars who are not bishops are also members thereof. The constitution of the episcopal council makes sense only with vicars who are presbyters). In fact, through the consultations, the coadjutor bishop and the auxiliary bishops participate in the duties of the diocesan bishop and act according to the mind and will of their bishop.

408 **§ 1. Episcopus coadiutor et Episcopus auxiliaris, iusto impedimento non detenti, obligantur ut, quoties Episcopus dioecesanus id requirat, pontificalia et alias functiones obeant, ad quas Episcopus dioecesanus tenetur.**

§ 2. Quae episcopalia iura et functiones Episcopus coadiutor aut auxiliaris potest exercere, Episcopus dioecesanus habitualiter alii ne committat.

§ 1. As often as they are requested to do so by the diocesan Bishop, a coadjutor Bishop and an auxiliary Bishop who are not lawfully impeded, are obliged to perform those pontifical and other functions to which the diocesan is bound.

§ 2. Those episcopal rights and functions which the coadjutor Bishop or the auxiliary Bishop can exercise are not habitually to be entrusted to another by the diocesan Bishop.

SOURCES: § 1: c. 351 § 4
§ 2: c. 351 § 3

CROSS REFERENCES: cc. 396 § 1, 400 § 2, 403

COMMENTARY

Remigiusz Sobanski

The main reason for which an auxiliary bishop is appointed is the assistance he can render in the exercise of the episcopal duties and functions; that is, the pontifical and also other functions constituting the obligations of the diocesan bishop. In fact, this assistance in the celebration of pontifical functions was so important that it is the German language, where the institution of auxiliary bishops has been widespread since the Middle Ages, that gave the name to the office of auxiliary bishop (*Weihbischof*). Moreover, the title *vicarius in pontificalibus* expressed the fact that among their duties, substituting for the diocesan bishop in pontifical functions as many times as was requested was considered foremost. Assistance in the exercise of pontifical functions is essential because the bishop must celebrate them not only in the cathedral church, but also in other churches (*DPMB* 8). Here it is a matter, above all, of visiting the diocese (cf. c. 396 § 1). If the diocesan bishop is lawfully impeded, he may fulfill the obligation of making the *ad limina apostolorum* visit through the coadjutor or auxiliary bishop.

Paragraph 1 imposes on the coadjutor bishop and on the auxiliary bishop the duty of rendering this assistance (i.e., celebrating pontifical functions) whenever requested by the diocesan bishop, if not lawfully impeded. Paragraph 2 provides that the diocesan bishop does not normally entrust to another those episcopal rights and duties that can be exercised by the coadjutor bishop or the auxiliary bishop. This provision should be seen as a complement to paragraph 1. In this treatment, it is a matter of the functions and faculties that constitute an obligation of the diocesan bishop. In the final version, the inconsistency between paragraphs 3 and 4 of c. 351 *CIC*/1917 was eliminated. It is not what the coadjutor bishop or the auxiliary bishop "can and wants to" exercise, but what he can exercise. The exercise of the functions entrusted by the diocesan bishop constitutes a duty of the coadjutor bishop or the auxiliary bishop, not an act of goodwill.

409 **§ 1. Vacante sede episcopali, Episcopus coadiutor statim fit Episcopus dioecesis pro qua fuerat constitutus, dummodo possessionem legitime ceperit.**

§ 2. Vacante sede episcopali, nisi aliud a competenti auctoritate statutum fuerit, Episcopus auxiliaris, donec novus Episcopus possessionem sedis ceperit, omnes et solas servat potestates et facultates quibus sede plena, tamquam Vicarius generalis vel tamquam Vicarius episcopalis, gaudebat; quod si ad munus Administratoris dioecesani, qui regimini dioecesis praeest.

§ 1. When the episcopal see falls vacant, the coadjutor immediately becomes the Bishop of the diocese for which he was appointed, provided he has lawfully taken possession.

§ 2. Unless the competent authority has provided otherwise, when the episcopal see is vacant and until the new Bishop takes possession of the see, the auxiliary Bishop retains all and only those powers and faculties which he had as Vicar general or as episcopal Vicar when the see was occupied. If he is not appointed to the office of diocesan Administrator, he is to exercise this same power of his, conferred by the law, under the authority of the diocesan Administrator, who governs the diocese.

SOURCES: § 1: c. 355 § 1
§ 2: c. 355 § 2; *ES* I, 13 § 3

CROSS REFERENCES: cc. 403, 412–427

COMMENTARY

Remigiusz Sobanski

1. When the episcopal see is vacant, due to any of the reasons discussed in c. 416, the coadjutor bishop who has taken possession of his office according to c. 404 § 1 immediately becomes the diocesan bishop. If he had not taken possession of his office before the see became vacant due to the death of the diocesan bishop, but he already has episcopal ordination, he must take possession of the office of the diocesan bishop, according to c. 382 § 2. This opinion is based on the fact that by receiving the apostolic letters, the coadjutor receives an *ius ad rem*. The object of this *ius* (the office of coadjutor), contains the right to succession, which dis-

tinguishes the coadjutor from auxiliary bishops. The coadjutor bishop is constituted to assist the diocesan bishop and then take possession of his diocese. The death of the bishop before the coadjutor bishop has taken possession of his office must not take away the significance of his constitution. It also seems that the coadjutor who has not yet received episcopal ordination must proceed in this way, notwithstanding c. 379. The reasons that are the basis of cc. 379 and 382 must give way to a rational application of law. The exceptional nature of the situation argues in favor of the reverse order of the liturgical and juridical acts. If before the coadjutor has taken possession of his office there is a vacancy in the episcopal see for any other reason, it is the Apostolic See that makes the decision.

2. The canon introduces variations with respect to the norms of the former Code (c. 355 § 2 *CIC*/1917), on the loss of the powers and faculties of the auxiliary bishop (with or without special faculties). *Christus Dominus* 26 c and *Ecclesiae Sanctae* I, 13 § 2 expressed the desire that, in the event of a vacancy in the episcopal see, those having the respective right to election temporarily entrust the governance of the diocese to the auxiliary bishop or one of them if there is more than one, unless there are important reasons to the contrary (*CD* 26 c), or the competent power decides otherwise (*ES* I, 13 § 3). The reason for this desire was to preserve the common good of the diocese and the dignity of the auxiliary bishop. Notwithstanding the desires expressed by the Council, no norm was introduced imposing a limitation on the freedom of the body that has the right to elect the person who is to temporarily govern the diocese (in spite of the fact that, in the event that a presbyter is elected, the auxiliary bishop is placed in a complicated situation). This desire expressed in *Christus Dominus* 26 was not received by the *CIC*. It was argued that it was not the desire of the Council to deprive the cathedral chapter of the right to elect the administrator.[1]

3. If a competent authority, that is the Holy See, does not provide otherwise, the auxiliary bishop retains all those rights and faculties that he possessed before the vacancy as vicar general or episcopal vicar. If he is appointed diocesan administrator, he has the power determined in c. 427 § 1. He can also have those faculties that are incumbent on the diocesan bishop and that law denies to the administrator of the diocese (cc. 272, 312 § 1,3°, 520 § 1) if before the vacancy they were entrusted to him by special mandate of the diocesan bishop. If he was not designated a diocesan administrator, he must exercise his power granted *a iure* (as vicar general or episcopal vicar) dependent on the diocesan administrator, even when the latter is not a bishop. The phrase *a iure* should be understood according to the norm of c. 409 § 2. During the vacancy, he retains the power he had before the see became vacant as vicar general or episco-

1. *Comm.* 24 (1992), p. 41.

pal vicar, according to law, until the new diocesan bishop takes possession of his office (there in no similar provision in *Christus Dominus*).

The new diocesan bishop must name the auxiliary as vicar general or episcopal vicar, in accordance with c. 406 § 2.

There remains the question of the auxiliary bishop given special faculties who was given to the person of the preceding bishop and retains his faculties during the vacancy in the see. Does he continue to retain them after the new bishop takes possession? It should be assumed that, when a new diocesan bishop is designated, the Holy See also makes a decision regarding the special faculties of the auxiliary bishop. There can be reasons to maintain them if they were motivated by certain circumstances of the diocese or by the duties that, outside of the diocese, are also incumbent on the new bishop. But if they were motivated by the personal circumstances of the preceding bishop, there is no reason to maintain them. The decision always depends on the Holy See.

410 **Episcopus coadiutor et Episcopus auxiliaris obligatione tenentur, sicut et ipse Episcopus dioecesanus, residendi in dioecesi; a qua praeterquam ratione alicuius officii extra dioecesim implendi aut feriarum causa, quae ultra mensem ne protrahantur, nonnisi ad breve tempus discedant.**

The coadjutor Bishop and the auxiliary Bishop are bound, like the diocesan Bishop, to reside in the diocese. Other than for the fulfilment of some duty outside the diocese, or for holidays, which are not to be longer than *one month*, they may not be away from the diocese except for a brief period.

SOURCES: c. 354

CROSS REFERENCES: cc. 403, 395, 1396

COMMENTARY

Remigiusz Sobanski

The coadjutor bishop and the auxiliary bishop, like the diocesan bishop, have the obligation to reside in the diocese, from which they must not be absent except for a brief period unless they must fulfill some duty outside the diocese (for example, participating in a council or in a meeting of the Bishops' Conference) or when on vacation, which must not last longer than one month. Their office entails the full care of souls. It devolves upon the diocesan bishop to take appropriate measures in the event of an unjustified absence. He must not allow an unjustified absence to last six months, but at the appropriate time must take measures to prevent it. He may fraternally reprimand the auxiliary bishop or the coadjutor. If appropriate, the application of the respective penalty, according to canon 1396, is reserved to the pope (c. 1405 § 1,3°). If the diocesan bishop should fail to intervene, the Metropolitan must inform the Apostolic See.

411 Episcopo coadiutori et auxiliari, ad renuntiationem ab officio quod attinet, applicantur praescripta cann. 401 et 402, § 2.

The provisions of cann. 401 and 402 § 2, concerning resignation from office, apply also to a coadjutor and an auxiliary Bishop.

SOURCES: *CD* 21; *ES* I, 11; SCB Let. (Prot. 355/67), 7 nov. 1970

CROSS REFERENCES: cc. 401, 402 § 2, 403

COMMENTARY

Remigiusz Sobanski

The coadjutor bishop and the auxiliary bishop who have reached seventy-five years of age, and also those who because of illness or a grave reason cannot fulfill their office properly, are asked to submit their resignation from office to the Supreme Pontiff.

During the drafting of the code, it was first maintained that the norms regarding the resignation from office by the diocesan bishop and the coadjutor must not include the auxiliary bishop.[1] There were also doubts with respect to the meaning of a juridical norm that requires that the coadjutor submit his resignation at age seventy-five. Coadjutors that are seventy years old are not to be appointed; therefore, it was remarked, it should be assumed that they will take possession of the office before reaching retirement age; moreover, for exceptional situations, juridical norms should not be established.[2] It was finally shown that there is no reason or need to establish distinct norms for coadjutor and auxiliary bishops.[3]

Only after the resignation is accepted does the diocesan bishop cease in the office that, according to c. 406, was entrusted to him. It is necessary to answer in the affirmative the question of whether the diocesan bishop can appoint as vicar the auxiliary bishop whose resignation has been accepted. Like the retired diocesan bishop, the coadjutor and the auxiliary bishop whose resignation has been accepted can, if they so desire, maintain their residence in the diocese, unless, due to special circumstances, the Apostolic See provides otherwise. The obligation to guarantee him suitable and worthy provision devolves upon the same diocese served by him.

1. Cf. *Comm.* 19 (1987), p. 123.
2. Cf. *Comm.* 24 (1992), p. 41.
3. Cf. *Comm.* 12 (1980), p. 314.

CAPUT III
De sede impedita et de sede vacante

ART. 1
De sede impedita

CHAPTER III
The Impeded or Vacant See

ART. 1
The Impeded See

412 **Sedes episcopalis impedita intellegitur, si captivitate, relegatione, exsilio aut inhabilitate Episcopus dioecesanus plane a munere pastorali in dioecesi procurando praepediatur, ne per litteras quidem valens cum dioecesanis communicare.**

The episcopal see is understood to be impeded if the diocesan Bishop is completely prevented from exercising the pastoral office in the diocese by reason of imprisonment, banishment, exile or incapacity, so that he is unable to communicate, even by letter, with the people of his diocese.

SOURCES: c. 429 § 1

CROSS REFERENCES: cc. 413, 414

COMMENTARY

Carlos Soler

This canon establishes the factual situations that give rise to the juridical situation of an impeded episcopal see: imprisonment, banishment, exile, and incapacity.

The first three are *external circumstances* in which the person of the bishop finds himself; the fourth is a personal condition of incapacity for governance due to physical or mental illness.

Imprisonment and exile are situations that do not require special commentary with regard to their definition. The same does not happen in regard to banishment; *relegatio* is a confinement. It is described as the "prescription of obligatory residence in a given place."[1] So it can be more effective to interpret *relegatio* as *confinement.*

The contrasting definition of these situations is of no interest because the juridical *quid* of the factual situation is not there. What is juridically relevant is that, regardless of the reason for the inability to communicate between the bishop and his faithful, he cannot communicate even by letter with the members of his diocese, so that he is *totally* prevented from exercising his pastoral function in the diocese. It is irrelevant, therefore, whether or not the absence of the bishop is due to intervention by the civil authority. The word *exsilio* does not only include the hypothesis of exile as a penalty imposed by the civil courts, but any absence of the bishop in which it is not possible to return to his diocese (for example, because of war, because he is refused permission to enter the country, etc.).

What is relevant for the purposes of causing the juridical situation of an impeded see is, we insist, that the bishop is totally prevented from exercising his duties, not even by letter. The reason for this latter clause ("unable to communicate, even by letter") is that, if he can communicate by letter, he can at least delegate his jurisdiction and transmit essential instructions.[2]

The incapacity of the bishop is a distinct hypothesis. The official text uses the word *inhabilitate*. This term means, in other passages of the Code, juridical incapacity. But here it undoubtedly refers to a physical incapacity, the inability to govern for any reason of illness or physical or psychological impairment. This hypothesis treats the sensitive problem of verification and judgment. Frequently, between health and illness there is a gradation that does not allow precise boundaries. Therefore, a double problem arises; when is this hypothesis verified and who decides each case?

As to the first question, the situation occurs when the bishop, as the canon states, is so impaired that he is "totally prevented" from performing his duties. But there is still another consideration. The Code above all considers cases of imprisonment, banishment, or exile when it requires the impossibility for episcopal communication;[3] however, we understand that,

1. J. MANZANARES, commentary on c. 412, in *Salamanca Com.*
2. Cf. J.I. ARRIETA, commentary on c. 412, in *Pamplona Com.*
3. Ibid.

at least by analogy. This impossibility of communication should also be taken into account for the determination of the hypothesis of an impeded see due to incapacity. This means that the bishop must be so incapacitated that he cannot even validly state his will to which we referred previously (delegation *ad universitatem causarum*, for example).

The initiation of the application of the impeded see governance requires a decision regarding verification of the hypothesis. Who makes this decision? In the *Relatio* of 1981, the Code Commission responded that, unless the Holy See intervenes, the decision devolves upon the person who must take charge of the governance of the diocese according to c. 413 § 1 or, if he is absent or impeded, the college of consultors (cf. c. 413 § 2).[4] It seems that this especially-authorized interpretation deserves credit also because of its own internal force. Who else would be considered entitled on good grounds to make that decision but those mentioned herein? Furthermore, this criterion is, obviously, also valid for the situation of an impeded see.

We shall now discuss the *characteristic feature* of the impeded see situation. We should note that in all these situations, by their very nature, the jurisdiction of the bishop does not cease to exist, nor is there any *juridical* restriction on its exercise. Obviously, the restriction consists merely of a *de facto* inability to exercise jurisdiction, but which remains juridically intact. This is the fundamental fact that determines the governance of the impeded see and that is distinguished notably from other situations. In our opinion, it is not only distinguished from the vacant see, but also from the situation contemplated in c. 415 (cf. commentary on c. 415).

One might believe that the canons of this first article of Chap. III (cc. 412–415) are only relics of the past. The fact is that in the experience of the Church, there are still various conflicts between Church and State that make these canons necessary for ensuring continuity in the governance of the Church.[5] By reviewing the pages of the *Annuario Pontificio* one can note which sees are considered impeded in Rome.

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4. *Comm.* 14 (1982), p. 220: "*Can 435.* Quis discernit quando sedes sit impedita? Ex. gr. si Episcopus in amentiam decidat, debetne ipse declarare, vel metropolita, vel Consilium Presbyterale? (Quidam pater) R. *Nisi Sancta Sedes discernat, decisio competit personae de qua in § 1* [it ought to read : c. 436 § 1] *vel, ea deficiente aut impedita, Collegio consultorum (cf. § 3* [it ought to read: c. 436 § 2]*).*" In the definitive text, the canons cited are §§ 1 and 2 of c. 413.

5. Cf. J.A. CORIDEN-T.J. GREEN-D.E. HEINTSCHEL, *The Code of Canon Law. A Text and a Commentary* (New York 1985), p. 341. For the Chinese case as an example of the relevance of these canons, cf. S.B.S. LEE, *Relaciones Iglesia-Estado en la República Popular China* (Pamplona 1990).

413 **§ 1. Sede impedita, regimen dioecesis, nisi aliter Sancta Sedes pro providerit, competit Episcopo coadiutori, si adsit; eo deficiente aut impedito, alicui Episcopo auxiliari aut Vicario generali vel episcopali aliive sacerdoti, servato personarum ordine statuto in elencho ab Episcopo dioecesano quam primum a capta dioecesis possessione componendo; qui elenchus cum Metropolitana communicandus singulis saltem triennis renoventur atque a cancellario sub secreto servetur.**

§ 2. Si deficiat aut impediatur Episcopus coadiutor atque elenchus, de quo in § 1, non suppetat, collegii consultorum est sacerdote meligere, qui dioecesim regat.

§ 3. Qui dioecesis regimen, ad normam § § 1 vel 2, susceperit, quam primum Sanctam Sedem moneat de sede impedita ac de suspecto munere.

§ 1. Unless the Holy See has provided otherwise, when the see is impeded, the governance of the diocese devolves on the coadjutor Bishop, if there is one. If there is no coadjutor or if he is impeded, it devolves upon an auxiliary Bishop, or a Vicar general, or an episcopal Vicar, or another priest: the order of persons to be followed is to be that determined in the list which the diocesan Bishop is to draw up as soon as possible after taking possession of his diocese. This list, which is to be communicated to the Metropolitan, is to be revised at least every three years, and kept under secrecy by the chancellor.

§ 2. If there is no coadjutor Bishop or if he is impeded, and the list mentioned in § 1 is not at hand, it is the responsibility of the college of consultors to elect a priest who will govern the diocese.

§ 3. The person who undertakes the governance of the diocese according to the norms of §§ 1 or 2, is to notify the Holy See as soon as possible that the see is impeded and that he has undertaken the office.

SOURCES: § 1: c. 429 §§ 1 et 2; SCPF Resp. 3, 25 ian. 1954
§ 2: cc. 427, 429 § 3; *CD* 27
§ 3: c. 429 § 4

CROSS REFERENCES: cc. 403 §§ 2 et 3, 405 § 2, 412, 502

COMMENTARY

Carlos Soler

1. Canons 413 and 414 establish the juridical system of governance of the diocese in the situations contemplated in c. 412. Canon 413 establishes the mechanisms by which it is determined upon whom the government of the diocese devolves; c. 414 indicates what his power is.

Before commenting on the text of the canons, it is worth noting that in the impeded see situation, all vicars retain their power, like the auxiliary bishops and the coadjutor bishop. This situation is owing to the fact that the proper jurisdiction to which they owe their origin—in the case of the vicars—is intact. For these purposes, the principle also applies that vicarious jurisdiction follows the condition of whoever conferred it.

If there is a coadjutor bishop, governance of the diocese passes to him. This determination is consistent with the figure of the coadjutor bishop as defined in cc. 403–411. To be specific, c. 405 establishes, according to our c. 413, that the coadjutor bishop takes the place of the bishop when he is absent or impeded.

If there is no coadjutor bishop or he is impeded, the canon establishes subsequent mechanisms for making determinations, on which we will comment shortly. But first, it is necessary to note a criterion of precedence that comes to us from another part of the Code. Canon 403 § 2 establishes that in particularly grave circumstances, an auxiliary bishop "possessing special faculties" can be appointed. He is a special type of auxiliary bishop that will not be considered here in detail (cf. commentary on c. 403). As far as we know, this type of appointment has been done at least once, in a diocese in the United States of America; however, c. 405 § 2 establishes that this auxiliary bishop possessing special faculties, like the coadjutor bishop, also takes the place of the bishop when he is impeded. Consequently, by virtue of this canon, when there is no coadjutor bishop, but there is an auxiliary bishop according to c. 403 § 2, the governance of the diocese devolves upon him, and none of the mechanisms for subsequent determination apply.

That said, let us continue with the commentary on the text of the canon. Once he has taken possession of the diocese, the bishop must draw up, communicate to the Metropolitan, and deliver to the chancellor a list for that purpose. As for the Metropolitan, we understand by analogy that he must—at least it is very appropriate for him to do so—communicate it to the senior suffragan bishop (cf. cc. 415, 421 § 2 and 425 § 3, where the senior suffragan is given certain faculties of the Metropolitan over the vacant or impeded see when the vacant or impeded see is precisely the Metropolitan). This list must be kept under secrecy by the chancellor, and it

must be updated at least every three years. Undoubtedly, apart from this triennial renewal, the bishop may make as many changes in the list as he deems appropriate at any time.

The person to govern the diocese is determined according to the order established on that list. This means that the order in which the bishop mentions the persons on his list is an order of precedence. It is not optional or indicative, but imperative and restrictive. Is it necessary to put the auxiliary bishop or bishops first? There is nothing to suggest this. But the wording of the Code (an auxiliary bishop, a vicar general or episcopal vicar, another priest) seems to imply the fact that this is the order of the list. The same is usually suggested by common sense in government, that primacy is granted to the auxiliary bishop and to the vicar general. Moreover, what *Christus Dominus* 26 states must be taken into account here: "It is indeed desirable, unless there are grave reasons to the contrary, that the responsibility of governing the diocese during the vacancy of the see should be entrusted to the auxiliary bishop, or if there are several, to one of them." This desire expressed by the Council fathers, although from the wording it is not juridically binding, must be normally taken into account, and it can be analogously applied to the case of an impeded see. Certainly, it is a desire that was not brought into the Code, but which remains valid due to the very force of the conciliar documents, inasmuch as it has never been contradicted. As for the rest, the dignity of the episcopal character normally demands it.

In certain cases of conflict between Church and State, it is likely that the collaborators closest to the bishop—the coadjutor, the auxiliary, the vicar general—will also be impeded at that the same time as the bishop. In anticipation of this, and in order to guarantee the stability of the governance in the diocese, the preparation of the aforementioned list is established, which must be sufficiently extensive in areas of conflict.

2. It can occur that this mechanism is not sufficient because all the persons on the list are impeded, the list has not been drawn up, or it is not sufficiently recorded. In this case, § 2 establishes that it devolves upon the college of consultors to elect a priest to govern the diocese. Should the norms of cc. 421 and 423–425 on the election of a diocesan administrator in the event of a vacant see be applied analogously? In answering this question, we must proceed with caution.

In the first place, a strict interpretation of the invalidating or incapacitating norms, as well as the difficult situation that the diocese may often face with an impeded see, make it impossible to apply the rules establishing terms of expiry or nullity and, consequently, those attributing faculties to the Metropolitan for the case of an expired or null election. In general, we can say that those canons have the value of norms indicative for the election in the event of an impeded see, except c. 424, because that reference to the norms on elections is evidently applicable to our issue. On the other hand, given that our canon establishes that *a priest* should

be elected, the effect of nullity established in cc. 423 and 425 § 3 is applicable if more than one is elected or the person elected is not a priest (this latter case is evident according to c. 150).

3. The situation of an impeded or vacant see is one of the privileged occasions on which the function of the *munus petrinum* becomes particularly evident with respect to all the churches, and which results in its immediate power over each and every one of them.[1] Therefore it is logical that these canons also stress this function and need to frequently refer to the Holy See.

In this canon, we have two examples. In the first place, all these mechanisms work *nisi aliter Sancta Sedes providerit*; that is, the Holy See, in each case, can take any measures it deems appropriate, in which case the provisions of this canon do not go into effect. In the second place, paragraph 3 establishes that whoever takes charge of the diocese must report as soon as possible to the Holy See on the impeded see situation and the fact that he has assumed governance. Both provisions have a solid ecclesiological basis to which we have referred, and at the same time they are practical requirements for good governance.

1. For an interpretation of this immediate power, cf. C. SOLER, "La jurisdicción cumulativa como manifestación de la 'communio potestatum,'" in W. AYMANS-K.T. GERINGER-H. SCHMITT (Eds.), *Das Konsoziative Element in der Kirche. Akten des VI Internationalen Kongresses für kanonisches Recht* (St. Ottilien 1989), pp. 321–330.

414 **Quilibet ad normam can. 413 vocatus ut ad interim dioecesis curam pastoralem gerat pro tempore quo sedes impeditur tantum, in cura pastorali dioecesis exercenda tenetur obligationibus atque potestate gaudet, quae iure Administratori dioecesano competunt.**

Whoever is called, in accordance with can. 413, to exercise the pastoral care of the diocese for the time being, that is, only for the period during which the see is impeded, is in his pastoral care of the diocese bound by the obligations, and has the power, which by law belong to the diocesan Administrator.

SOURCES: cc. 438–444

CROSS REFERENCES: cc. 272, 312 § 1, 3°, 409 § 2, 412, 427–429, 462 § 1, 468 § 2, 485, 490 § 2, 502 § 2, 509 § 1, 525, 2°, 1018 §§ 2 and 3, 1420 § 5

COMMENTARY

Carlos Soler

By way of reference, this canon establishes the juridical system of governance of the diocese once it is determined who is to take charge. The designated individual has the power and obligations that by law belong to a diocesan administrator. This means that all the canons on the power and obligations of the diocesan administrator apply to him, that is, cc. 427–429 and other canons of the Code on the power of the diocesan administrator (see commentary on cc. 427–429). For now, let us indicate merely that the principle *sede vacante nihil innovetur* (set forth in c. 428 § 1) also applies in this case.

This is an important point in understanding the juridical system of the diocese where the see is impeded; the jurisdiction of the bishop remains intact, in spite of the fact that he is physically impeded from its exercise (cf. commentary on cc. 412 and 413). This fact prevails over the entire system of governance in the case of an impeded see. This justifies the fact that the bishop himself determines the list of persons to take charge of the diocese in this situation; given that his power exists, it functions to delegate or determine who takes his place, which does not occur in the situation of c. 415 (cf. commentary), or in the vacant see. The bishop cannot make a list of persons for when the see is vacant—that is, for when he has lost his power—precisely because in that situation his

power does not persist and it cannot be delegated nor entrusted to another in any way.

Precisely because the power of the bishop is maintained, that of his vicars and delegates also is maintained. Therefore, whoever takes charge of the diocese in the event of an impeded see possesses, in addition to the powers of the diocesan administrator, the powers he has by reason of being the coadjutor bishop or the auxiliary bishop. The same applies if he is a vicar general to whom the bishop has delegated special faculties. It can be argued that, in these hypothetical situations, all those faculties are already included in those of a diocesan administrator; but it is worth knowing, in case of doubt, that they at least possess these faculties and the power of which we are speaking.

Moreover, from the internal logic of the situation, it seems perfectly legitimate for the bishop—for example, in the same document containing the list—to grant, with due care, some of the faculties excluded from the diocesan administrator, that his power persists and that he can make all legitimate delegations. However, it does not seem that he can restrict the power of the person who is going to take charge of the diocese, inasmuch as it is power attributed by law for that situation. There is also a literal argument; if the bishop must draw up a list of persons to whom he is going to attribute the power of a diocesan administrator, if he is obligated by law, he cannot given them *less* power than that of a diocesan administrator. Any provisions to this effect would probably be null and void.

415 **Si Episcopus dioecesanus poena ecclesiastica a munere exercendo prohibeatur, Metropolita aut, si is deficiat vel de eodem agatur, suffraganeus antiquior promotione ad Sanctam Sedem statim reccurat, ut ipsa provideat.**

If the diocesan Bishop is prohibited from exercising his office by reason of an ecclesiastical penalty, the Metropolitan is to refer the matter at once to the Holy See, so that it may make provision; if there is no Metropolitan, or if he is the one affected by the penalty, it is the suffragan senior by promotion who is to refer the matter.

SOURCES: c. 429 § 5

CROSS REFERENCES: cc. 143 § 2, 403 § 2, 405 § 2, 481 § 2, 1324 §§ 2 et 3, 1331–1333, 1336 § 1, 3°, 1405 § 1, 3°

COMMENTARY

Carlos Soler

This canon regulates the case in which the bishop is prohibited from exercising his office by reason of an ecclesiastical penalty.

The first thing that should be noted is that, although it is systematically included in the article, *De sede impedita*, this case is essentially different than what is envisioned in c. 412 and regulated in cc. 413–414. This juridical situation as well as the established system of governance, is different (as we shall see shortly, the differences in the governance must necessarily derive from the difference in the juridical situation).

The difference in this situation lies in the fact that *the proper jurisdiction of the bishop is juridically affected.* It does not cease to exist, as in the case of the vacant see, but neither does it remain juridically intact, as in the cases of c. 412.

For this reason, the norms of c. 413 cannot be applied; if the bishop's jurisdiction is juridically intervened, he cannot hand it over to others, as delegates or vicars, nor in any other way exercise it. Another important aspect of the governance of the diocese concerns the vicars of the bishop, in that the vicarious power of the bishop is also intervened unless they are bishops. Canon 481 § 2 establishes that "*suspenso munere Episcopi dioecesani*" suspends the power of his vicars unless they are bishops. To what does the expression *suspenso munere Episcopi* refer? Evidently, it does not refer to the loss of the power of the bishop, which is the case of the vacant see as contemplated in § 1 of the same canon. Neither can we

understand it to refer exclusively to the penalty of suspension in c. 1333, nor to those of excommunication or interdict, because that would be absurd. Therefore, the hypothetical situation of our canon is included in this provision, which is consistent with the principle that vicarious jurisdiction follows the condition of proper jurisdiction.

Now we will consider the factual situation. The canon states: "If the diocesan bishop is prohibited from exercising his office by reason of an ecclesiastical penalty ..." The penalties referred to are excommunication, interdict, and suspension, not the penalty of privation, nor to any other penalty that entails the loss of the office, inasmuch as these latter penalties are cases of a vacant see (cf. cc. 1331–1333; also c. 1336 § 1,3°). What happens in the event of an undeclared penalty *latae sententiae*? Of course, c. 1324 § 3 must be taken into account; if there is any mitigating circumstance, the offender—in this case, the bishop—is not bound by the undeclared penalties *latae sententiae* (cf. also c. 1335). Consequently, we can say that only in the event of a notorious delict in which there is, beyond any doubt, full imputability can the power of the diocesan bishop *perhaps* be understood as affected by a penalty *latae sententiae.* We understand that this situation also occurs when the bishop has appealed a penalty of privation while the recourse is being resolved. In this case, as stated in c. 143 § 2, the ordinary power of the bishop is suspended.

The norm in this case is simply that the Holy See must provide. For this purpose, the Metropolitan or, if it is a matter of the Metropolitan bishop, the senior suffragan, must inform the Holy See as soon as possible. When the penalties are imposed or declared, it is very unlikely, more precisely impossible, that the Holy See would not be aware of the case inasmuch as it devolves exclusively upon the Holy See to judge bishops in penal cases, as provided in c. 1405 § 1,3°, except in the rare event of special delegations. Therefore, this duty to inform can only apply in cases of penalties *latae sententiae* with the conditions we indicated earlier, if any of them actually applies.

Thus, the duty to inform can be considered irrelevant in practice. The fundamental issue is the provision that only the Holy See can provide in these particularly grave and distressing cases. Here we have another of the specific manifestations of the primatial function of the Petrine see in the *communio ecclesarium.*

If there is a coadjutor bishop—or an auxiliary bishop pursuant to c. 403 § 2—he not only retains his power recognized by law, but it also devolves upon him to take charge of the governance of the diocese while the Holy See makes provision; this is pursuant to c. 405 § 2.

ART. 2
De sede vacante

ART. 2
The Vacant See

416 **Sedes episcopalis vacat Episcopi dioecesani morte, renuntiatione a Romano Pontifice acceptata, translatione ac privatione Episcopo intimata.**

The episcopal see becomes vacant by the death of the diocesan Bishop, by his resignation accepted by the Roman Pontiff, by transfer, and by deprivation notified to the Bishop.

SOURCES: c. 430 § 1

CROSS REFERENCES: cc. 54 § 2, 55–56, 187–196, 401, 417–430, 481 § 1, 1336 § 1, 2°, 1338, 1405 § 1, 3°

COMMENTARY

Carlos Soler

I. General presentation of Art. 2: situation and governance of a vacant see

Canon 416 addresses the cases in which a see becomes vacant. Once this canon has addressed the situations in which there is a vacant see, the remaining canons in this article will regulate the corresponding norms. Now we will present a general overview of those canons, which may serve as a guide in your reading and interpretation. In fact, there are two juridical situations, each with its own norms: the vacant see before the designation of the diocesan administrator (regulated by cc. 419 and 426, which establish who will take charge of the diocese and what their power is re-

spectively), and the vacant see after the designation of the diocesan administrator (the power, obligations, and cessation of whom are discussed in cc. 427–428, 429, and 430 respectively). To these situations we must add two special ones: in the case of a transfer of the bishop, the time he will remain in the diocese *a qua* before taking possession of the diocese *ad quam* (c. 418), and the interim period until the vicars verify the loss of the power of the bishop (c. 417). Canons 421–425 regulate the designation of the diocesan administrator in all respects. Canon 420 establishes the governance of the vacant see in prefectures and vicariates. Canon 422 establishes the obligation to inform the Holy See in all cases. Thus, we have all the canons according to their order: cc. 417 and 418, the interim situation until it becomes known that the see is vacant or until the taking of possession in the new diocese in the event of a transfer; c. 419, governance until the appointment of a diocesan administrator; c. 420, governance of the vacant see in vicariates and prefectures; cc. 421 and 423–425, appointment of the diocesan administrator; c. 422, the obligation to inform; c. 426, the power of the one who governs the diocese before the designation of the diocesan administrator; cc. 427–429, power and obligations of the diocesan administrator; c. 430, cessation of the diocesan administrator.

II. The situation of a vacant see in brief

In reality, the see becomes vacant when the bishop loses his jurisdiction; that is, when he ceases in his office. This canon, which should have been limited to this statement, also goes on to indicate the causes of the loss of office by the diocesan bishop, which issue in itself has nothing to do with the governance of the vacant see. The occurrence of the vacant see directly depends on the fact of the loss of office by the bishop, regardless of the cause of that loss of office. It would have been more appropriate to include these causes at the end of the article on diocesan bishops. Nevertheless, given that they are included, we must comment on them. On the other hand, the vacant see situation can be partially affected in cases of certain causes of loss of office, as we shall see. Perhaps it is for this reason that the Code chooses to regulate the governance of the actual loss of office by the diocesan bishop here, with the vacant see situation, except for some other issues that are discussed in other parts of the Code.

III. The loss of the episcopal office

The loss of office by the diocesan bishop is an especially delicate matter. Let us bear in mind that it is a constitutional office, the importance

of which has been particularly emphasized by Vatican Council II; the bishop is a vicar of Christ in his diocese, and therefore its proper pastor.

1. *Causes*

a) *Death.* The case of the death of the bishop does not present any special problems. They may arise only when the death is not known, or it is not known for certain which situation is contemplated in the following canons. Is a declaration of presumptive death adequate? In this hypothesis, the see would already have been impeded. Canon law, like most civil codes, has no general provisions for the situation of an absence or disappearance, nor a juridical provision on the legal presumption of death. The issue of presumed death is only considered for that of the spouse, in c. 1707. It seems that, if there is not sufficient evidence of the death of the bishop, then before proceeding to the appointment of a new one, the Holy See should proceed to a declaration of presumed death, which would give rise to a vacant see until the taking of possession by the new bishop. This hypothetical situation can occur where the Church is severely persecuted and reliable news on the state of bishops in captivity, or missing or absent bishops, cannot be obtained.

b) *Resignation.* For resignation, cc. 187–189 on the resignation from offices in general apply. The bishop may submit his resignation to the Roman Pontiff for any just cause (c. 187). If it is made as a result of a grave fear unjustly inflicted, deceit, substantial error, or simony, it is invalid (c. 188). It must be made in writing or orally before two witnesses. Canon 401 requests that it be submitted when the bishop has completed his seventy-fifth year and whenever, due to illness or another grave cause, his capacity to fulfill his office is diminished. The generalized practice of resignation at age seventy-five makes this situation statistically important. The resignation does not take effect until it is accepted by the Roman Pontiff. As in *CIC*/1917, we are still faced with an ambiguity: does the loss of office—and consequently, the vacant see—take place at the moment it is accepted by the pope or at the moment in which the acceptance is communicated to the bishop? (we will discuss the matter of communication at the end of the commentary on this canon, where we will consider it jointly for cases of resignation, transfer, and privation).

In another respect, the practice of the Holy See—which frequently accepts bishops' resignations after a year or more has elapsed from when they were submitted—makes it clear that the case of paragraph 3 of c. 189 does not apply, which provides that if three months elapse and the resignation is not accepted, it has no effect. It also appears that paragraph 4 of the same canon, the one on the revocability of the resignation with nullifying effects, does not apply.

c) *Transfer.* With regard to the transfer, the basic issue is whether acceptance by the bishop is required. The answer to this question can only be found in an examination of the practice of the competent bodies of the Curia. Canon 190 § 2, on the need for a grave cause when the holder of an office objects to the transfer should be kept in mind. Normally only the pope has the power to transfer—also according to c. 190—because, aside from certain exceptions, he appoints bishops by free conferral (and, in all other cases, he confirms those legitimately elected). With respect to a decree of the Roman Pontiff, there is no appeal or recourse (c. 333 § 3), which makes real opposition to the transfer procedurally impossible. In practice, it seems that the Roman Pontiff ordinarily does not issue a decree of transfer without having made certain that the interested party is in agreement.

d) *Privation.* Privation is a canonical penalty, and therefore it is governed by the canons on penal law, as acknowledged in c. 196 (on the penalty of privation, cf. cc. 1336 § 1, 2° and 1338). If the penalty of privation is appealed, the ordinary power of the bishop is suspended, as provided in c. 143 § 2. In this case, and until the recourse is resolved, the see is not vacant, but impeded. This is the actual situation set forth in c. 415. Canon 481 § 2 also applies where it refers to the vicars of the bishop (cf. commentary on c. 415). For bishops, the Code does not contemplate the case of a non-penal removal.

In all cases (death, resignation, transfer, and deprivation), the loss of power by the bishop includes that of his vicars, the vicar general, and the episcopal vicars, unless they are bishops, as provided in c. 481 § 1.

2. *The necessity of communication in order to be effective*

With regard to the necessity of communication for the respective pontifical acts to be effective, we must distinguish two different systems. In the event of acceptance of the resignation, the Code does not mention the need for communication for a vacant see to occur; on the contrary, it is required for transfers and privation by use of the word *intimada*; if it is expressly mentioned in these cases and not in that of the acceptance of the resignation, it seems that the latter is not necessary. If we refer to the canons on the loss of office, we find the same: cc. 190 § 3 and 193 § 4 require—for the purposes of loss of office—written notification in cases of a transfer or removal (deprivation is a penal removal), but the same is not said regarding acceptance of the resignation. Therefore, it seems to be inferred that the bishop loses his office and the see becomes vacant upon acceptance of the resignation, without notification being necessary for this purpose.

We must here present a problem that affects the interpretation of some subsequent canons. In those canons, certain effects are established

that follow the receipt of *certain notification* of the respective pontifical acts; for example, c. 417 establishes that the acts of the bishop—and also of his vicars—are valid until he receives certain notification of those pontifical acts. What should be understood as "certain notification"? In the cases of transfers and deprivation, it is clear that, with regard to the bishop, certain notification can only be the communication; however, assuming that the acceptance of the resignation does not require communication to take effect, we can state that the bishop loses his power and a see becomes vacant when he becomes truly aware, by any means, of acceptance of the resignation. With respect to the vicars, in all cases receipt of certain notification can consist of any sure method by which they are informed of the fact; no communication is necessary.

Nonetheless, we could believe that, by virtue of c. 54, acceptance of the resignation must also be communicated in order to take effect. If this interpretation is accepted, it should be said that certain notification also necessarily consists of communication with respect to the bishop. Although this has some support, we will herein stand by the interpretation that seems more faithful in a literal sense, that is, that communication is not necessary in the case of acceptance of the resignation (although the contrary would be preferable). Nor does it have to be said that, although it is not necessary to have effect, obvious reasons make it advisable in all cases.

Furthermore, by virtue of cc. 190 § 3 and 193 § 4, as well as the canons on administrative acts (especially c. 54 § 2, taking into account cc. 55–56), communication normally should be in writing.

417 **Vim habent omnia quae gesta sunt a Vicario generali aut Vicario episcopali, donec certam de obitu Episcopi dioecesani notitiam iidem acceperint, itemque quae ab Episcopo dioecesano aut a Vicario generali vel episcopali gesta sunt, donec certam de memoratis actibus pontificiis notitiam receperint.**

Until they have received certain notification of the Bishop's death, all actions taken by the Vicar general or the episcopal Vicar have effect. Until they have received certain notification of the aforementioned pontifical acts, the same is true of actions taken by the diocesan Bishop, the Vicar general or the episcopal Vicar.

SOURCES: c. 430 § 2; *CD* 27; *ES* I, 14 § 2

CROSS REFERENCES: cc. 129–144, 184–196, 409 § 2, 416, 481

COMMENTARY

Carlos Soler

1. All acts of the vicars of the bishop are valid until they become fully aware of the death of the bishop. It can be considered that this canon gives power *a iure*, inasmuch as this efficacy cannot be deemed to come to them through the power of a bishop who no longer exists. The see becomes vacant at the moment of death, of course, but the Code establishes this provision for obvious practical reasons. It is understood that acts performed within the scope of their respective competencies are valid. The Code here refers to the offices considered insofar as they are offices.

What happens with acts performed not by virtue of the competencies belonging to the office, but by virtue of special delegations or special mandates previously given by the bishop? In my opinion, we should distinguish between what is delegated to the vicar because he is a vicar, that is to the office, and what is delegated to the vicar *intuitu personae;* special mandates made to the vicar *because he is a vicar* can be deemed tied to the office, and therefore they follow the status of the office. By virtue of this canon, the respective acts must be considered valid until receipt of certain notification and invalid thereafter. On the other hand, other delegations made by the bishop *to the person* do not result in acts performed by virtue of the office of the vicar, but by virtue of the delegation made to that person. Consequently, c. 142 § 1 *in fine* applies thereto: delegated power "does not lapse on the expiry of the authority of the person delegat-

ing, unless this appears from clauses attached to it." Therefore, these acts are valid before as well as after certain notification is received. In practice, the juridical system during the time prior to receipt of certain notification is that of the validity of all acts.

By virtue of c. 409 § 2, the auxiliary bishop retains the power that devolves upon him as the vicar general or the episcopal vicar; therefore, the provisions of this canon are not necessary with regard to him.

2. This canon also establishes that all acts of the bishop and of his vicars are valid until they receive notice of the transfer, of privation, or of acceptance of the bishop's resignation (cf. c. 416). Several cases must be distinguished in this precept:

a) In cases of transfer and deprivation, notification is necessary for the bishop to lose his office and consequently for the see to become vacant (cf. commentary on c. 416). Thus, it is not sufficient that he receive certain notification through other means; notification is what gives rise to the new situation in which the canons of this article begin to be applied. Before notification, the see is occupied, and it is not appropriate for any problem to be raised.

b) In the case of acceptance of the resignation, it is sufficient for the bishop to have certain notification by any means for his acts to begin to be invalid.

Once the see becomes vacant because the bishop has been informed of the privation or the transfer, or because his resignation has been accepted, the acts of the bishop are invalid (provided that the bishop has notification of the acceptance, and with a qualification in the case of the transfer [see commentary on c. 418]). But it may occur that the vicars do not receive timely notice; in the meantime, their acts are valid, according to the observations we have made in the lines above. Also, this notice, as we have stated, never has to necessarily consist of a notification.

418 **§ 1. A certa translationis notitia, Episcopus intra duos menses debet dioecesim ad quam petere eiusque canonicam possessionem capere autem captae possessionis dioecesis novae, dioecesis a qua vacat.**

§ 2. A certa translationis notitia usque ad canonicam novae dioecesis possessionem, Episcopus translatus in dioecesi a qua:

1° Administratoris dioecesani potestatem obtinet eiusdemque obligationibus tenetur, cessante qualibet Vicarii generalis et Vicarii episcopalis potestate, salvo tamen can. 409, § 2;

2° integram percipit remunerationem officio propriam.

§ 1. Within two months of receiving certain notification of transfer, the Bishop must proceed to the diocese to which he has been transferred and take canonical possession of it. On the day on which he takes possession of the new diocese, the diocese from which he has been transferred becomes vacant.

§ 2. In the period between receiving certain notification of the transfer and taking possession of the new diocese, in the diocese from which he is being transferred the Bishop:

1° has the power, and is bound by the obligations, of a diocesan Administrator; all powers of the Vicar general and of the episcopal Vicar cease, without prejudice to can. 409 § 2;

2° receives the full remuneration proper to the office.

SOURCES: § 1: c. 430 § 3
§ 2: cc. 194 § 2, 430 § 3, 1° et 3°

CROSS REFERENCES: cc. 190–191, 272, 312 § 1, 3°, 382, 409 § 2, 427–429, 462 § 1, 468 § 2, 485, 490 § 2, 502 § 2, 509 § 1, 525, 2°, 1018 §§ 2 et 3, 1420 § 5

COMMENTARY

Carlos Soler

Faithful to its decision to regulate here the loss of the diocesan bishop's office, the Code establishes in this canon some provisions for the case of the transfer. Some of these provisions do not in themselves have anything to do with the situation of a vacant see. Moreover, and this does

have to do with the situation of a vacant see, this canon regulates one of the two "special situations" mentioned in the commentary on c. 416: the situation of the diocese from the time the bishop receives notification of his transfer until he takes possession of the new diocese.

Paragraph 1 establishes that the bishop must take possession of the diocese *ad quam* within two months. The former Code established a term of four months, which has now been reduced by half. The taking of possession is governed by c. 382; the qualification of paragraph 2 ("unless he is lawfully impeded") also applies, of course, to the case of a transfer. For its part, paragraph 2, 2° of the canon being discussed establishes that, in the meanwhile, he receives full remuneration of his office.

Paragraph 1 also establishes that, once possession is taken of the new diocese, the diocese *a qua* becomes vacant. This is important because the see becomes vacant with the taking of possession of the new diocese, not with notification of the transfer. It is at that moment, therefore, that all the provisions on the governance of a vacant see begin to take effect. The situation that occurs between notification of the transfer and the taking of possession is *a distinct situation.*

Governance in this situation is regulated by paragraph 2. This paragraph establishes that, from notification of the transfer until the taking of possession in the diocese *ad quam,* the bishop has all the rights and obligations of a diocesan administrator (cf. commentary on cc. 427–429). The other aspect of the governance of the diocese in that *interim* is that all the power of the vicars ceases, except that of the auxiliary bishop, as provided in c. 409 § 2. In this regard, the provisions of c. 417 apply; the acts of the vicars are valid until they receive certain notification of the transfer of the bishop.

419 **Sede vacante, regimen dioecesis, usque ad constitutionem Administratoris dioecesani, ad Episcoporum auxiliarem, et si plures sint, ad eum qui promotione si antiquior devolvitur deficiente autem Episcopo auxiliari, ad collegium consultorum, nisi a Sancta Sede aliter provisum fuerit. Qui ita regimen dioecesis assumit, sine mora convocet collegium competens ad deputandum Administratorem dioecesanum.**

While the see is vacant and until the appointment of a diocesan Administrator, the governance of the diocese devolves upon the auxiliary Bishop. If there are a number of auxiliary bishops, it devolves upon the senior by promotion. If there is no auxiliary Bishop, it devolves upon the college of consultors, unless the Holy See has provided otherwise. The one who thus assumes the governance of the diocese must without delay convene the college which is competent to appoint a diocesan Administrator.

SOURCES: cc. 427, 431 § 1; *CD* 26; *ES* I, 13 § 3

CROSS REFERENCES: cc. 421, 426, 502 §§ 2 et 3

COMMENTARY

Carlos Soler

This canon regulates the situation that exists between the moment at which the diocese becomes vacant and the election of the diocesan administrator. When does this situation begin? In the case of a transfer, it is when the bishop takes possession of the new diocese; in the case of privation, it is when the privation is communicated to the bishop; in the case of a resignation, it is when the resignation is accepted by the Roman Pontiff; obviously, in the case of death, it begins with death itself.

If there is a coadjutor bishop, the see is not vacant because he immediately assumes the office of diocesan bishop. If there is an auxiliary bishop, governance of the diocese passes to him; if there is more than one, to the senior by promotion. What does "by promotion" mean? Promotion is the juridical act by which the pope appoints bishops—or confirms those who are lawfully elected—and gives the appropriate mandate for their

episcopal ordination.[1] Therefore, the senior auxiliary bishop for these purposes is not the one who first took possession as the auxiliary bishop of that diocese, nor the one who has first been ordained, but the one who has first received the apostolic letters recording his appointment. His main function is to inform the members of the college of consultors, or as the case may be, the cathedral chapter, of the vacant see and to convene them for the election of the diocesan administrator without delay. Given that the diocesan administrator must be elected within eight days (see c. 421 and its commentary), the college must be convened within this term. As the president of the college of consultors, it also devolves upon the senior auxiliary bishop to inform the electors of the norms for the election and of the requisites that the person elected must meet. Lastly, as provided in c. 422, it devolves upon senior auxiliary bishop to inform the Holy See without delay of the vacant see in the event of the death of the bishop (in the other cases the Holy See will have already been informed.) This reporting is usually delivered through a nuncio.

If there is no auxiliary bishop, the power passes to the college of consultors, which exercises it collegially during those days. In this case, the aforementioned informing, communicating, and convening functions devolve upon the president of the college. According to c. 502 § 2, the president, in this case, is the senior by ordination.

Regarding the type of power possessed by the person who takes charge of the diocese in accordance with this canon, see c. 426 and its commentary.

1. Regarding the technical meaning of "promotion," cf. cc. 377 § 1, 379 and 380 in conjunction with one another.

420 **In vicariatu vel praefectura apostolica, sede vacante, regimen assumit Pro-Vicarius vel Pro-Praefectus ad hunc tantum effectum a Vicario vel a Praefecto immediate post captam possessionem nominatus, nisi aliter a Sancta Sede statutum fuerit.**

Unless the Holy See has prescribed otherwise, when the see is vacant in a vicariate or a prefecture apostolic, the governance is assumed by the Pro-Vicar or Pro-prefect who was designated for this sole purpose by the Vicar or prefect immediately upon taking possession.

SOURCES: c. 309 §§ 1 et 2

CROSS REFERENCES: cc. 371 § 1, 368

COMMENTARY

Carlos Soler

This canon establishes the governance of a vacant see for apostolic vicariates and prefectures. In these cases, the governance passes to a pro-vicar or pro-prefect designated for this sole purpose by the vicar or prefect.

The question is: what is the power of this pro-vicar or pro-prefect? It would seem logical that the norms on the power of the diocesan administrator should be applied by analogy. However, the terms *pro-vicar* and *pro-prefect* certainly indicate—because they follow a terminology with unquestionable interpretation in canon law—that they have all the power of the vicar or prefect without restrictions. The peculiarity of the figures of the vicariate and the prefecture—the governance of which is performed in the name of the Roman Pontiff (cf. c. 371 § 1 *in fine*)—and the peculiarity of the situations in which they exist, make this reasonable. On the other hand, the peculiarity of the governance that occurs in these divisions in the event of a vacant see make this more difficult to apply by analogy.

In spite of all this, it seems necessary to keep in mind the principle *sede vacante nihil innovetur*, if not as a binding juridical criterion, at least as a reasonable practical criterion of good governance. There are two specific limitations on the power of the diocesan administrator that also affect the pro-vicar and the pro-prefect expressed in c. 1018 §§ 1, 2° and 2, according to which they cannot give dismissorial letters without the consent of the mission council, nor—even with this consent—give them to

those who had been rejected by the vicar or prefect (cf. commentary on cc. 427 and 428).

The vicar or prefect must appoint this pro-vicar or pro-prefect immediately after their taking of possession. It seems reasonable to suppose that they must adopt appropriate measures in order that his name be recorded and known, not only by the Holy See, but also by persons competent enough for it to be accepted without apprehension when the time comes.

All of this juridical governance is appropriate, provided that the Holy See does not provide otherwise, as stated in the last paragraph of this canon.

421 **§ 1. Intra octo dies ab accepta vacationis sedis episcopalis notitia, Administrator dioecesanus, qui nempe dioecesim ad interim regat, eligendus est a collegio consultorum, firmo praescripto can. 502, § 3.**

§ 2. Si intra praescriptum tempus Administrator dioecesanus, quavis de causa, non fuerit legitime electus, eiusdem deputatio devolvitur ad Metropolitam, et si vacans sit ipsa Ecclesia metropolitana aut metropolitana simul et suffraganea, ad Episcopum suffraganeum promotione antiquiorem.

§ 1. Within eight days of receiving notification of the vacancy of an episcopal see, a diocesan Administrator is to be elected by the college of consultors, to govern the diocese for the time being, without prejudice to the provisions of can. 502 § 3.

§ 2. If, for any reason, the diocesan Administrator is not lawfully elected within the prescribed time, his appointment devolves upon the Metropolitan. If the metropolitan see is itself vacant, or if both the metropolitan see and a suffragan see are vacant, the appointment devolves on the suffragan who is senior by promotion.

SOURCES: § 1: cc. 427, 432 § 1; SCCong Decr. *Quum Delegatus*, 22 feb. 1919 (*AAS* 11 [1919] 75–76); SCCong Decr. *Cohaerenter ad ea*, 8 maii 1919 (*AAS* 11 [1919] 233); SCPF Resp. 3, 26 ian. 1954
§ 2: c. 432 § 2

CROSS REFERENCES: cc. 200–203, 422–425, 502

COMMENTARY

Carlos Soler

This canon establishes the time limit for election of the diocesan administrator, characterizes that time limit as one that expires, and determines the procedure for appointing the diocesan administrator when the time limit has expired.

The time limit is eight days "*ab accepta vacationis sedis notitia.*" It must be understood that the time begins to run at the moment in which the auxiliary bishop, if applicable, or the president of the college of consultors receives notice of the vacancy, by any means.

It is a time that expires, meaning that if within eight days a diocesan administrator has not been lawfully elected, the college's right to election is lost and the appointment passes to the one we shall mention shortly. First, let us highlight the phrase *"lawfully elected"* (§ 2). By virtue of this phrase, if the norms of the election have been violated so that the election is invalid, the time continues to run; it does not stop at any time. Thus, if eight days have lapsed and there has not been a new valid election when it is possible, the election period expires.

As we said, it is a time that expires, regardless of the cause, as is evidenced at the beginning of paragraph 2. Therefore, it does not matter if the college of consultors is unable to meet, or if there is any other just cause that has prevented the election. This phrasing means that the expiry is not a penal effect. There is no attempt thereby to penalize the negligence of the members of the college or their inability to reach a resolution. The value to be protected is continuity in the governance of the diocese, and that is why the consequences of the lapsed time are maximally objectified.

The effect of expiry is that the appointment of the diocesan administrator passes to the Metropolitan. Naturally, the appointment is by free conferral. If the vacant see is the metropolitan see, or if the metropolitan see is vacant at the same time as the suffragan see, the appointment passes to the senior suffragan by promotion (cf. commentary on c. 419 for the meaning of "by promotion").

Lastly, there is the reference to canon 502 § 3. In this canon, it is said that "The Bishops' Conference can determine that the functions of the college of consultors be entrusted to the cathedral chapter." In these cases, it devolves upon the chapter to elect the diocesan administrator.[1] In some countries in central Europe, the chapter still enjoys the right to election or presentation of the bishop. Therefore, it seems reasonable for it to also have competence in the appointment of the diocesan administrator. This is the reason that explains and justifies the reference to canon 502 § 3.[2]

1. For information regarding the decisions of the different Bishops' Conferences, cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopali complementare al CIC* (Milan 1990). (Editor's Note: For complementary norms promulgated by English language Conferences of Bishops, see Volume V, Appendix 3.)

2. Cf. J.I. ARRIETA, commentary on c. 421, in *Pamplona Com.*

422 **Episcopus auxiliaris et, si is deficiat, collegium consultorum quantocius de morte Episcopi, itemque electus in Administratorem dioecesanum de sua electione Sedem Apostolicam certiorem faciant.**

The auxiliary Bishop or, if there is none, the college of consultors, must as soon as possible notify the Apostolic See of the death of the Bishop. The person elected as diocesan Administrator must as soon as possible notify the Apostolic See of his election.

SOURCES: c. 432 § 4

CROSS REFERENCES: cc. 427 § 2, 502 § 3

COMMENTARY

Carlos Soler

We are faced with one of the canons that bear witness to the role of the Church of Rome in the *corpus Ecclesiarum*. Indeed, it is in his role as the head of the communion of the churches that the pope has immediate responsibility and jurisdiction over each particular Church and over each of the faithful; he is naturally involved in the special situations of the churches, and specifically in that of the vacant see. That is why the following double duty to inform is provided for: a) whoever is in charge of the diocese before the election of the diocesan administrator (the senior auxiliary bishop, or lacking that, the college of consultors) must give notification that the see is vacant. In the cases of resignation, transfer, and deprivation the Holy See will already be aware of the vacancy, so, in practice, this duty only affects the case of the death of the bishop; b) and the person who has been elected diocesan administrator must report his appointment. The diocesan administrator acquires his power by mere acceptance of his election, as provided in canon 427; therefore, notification to the Holy See has no effect with regard to the possession of the office.

In both cases, the notification must be done as soon as possible, and is usually be done through a nuncio or apostolic delegate.

423 **§ 1. Unus deputetur Administrator dioecesanus, reprobata contraria consuetudine; secus electio irrita est.**

§ 2. Administrator dioecesanus ne simul sit oeconomus; quare si oeconomus dioecesis in Administratorem electus fuerit, alium pro tempore oeconomum eligat consilium a rebus oeconomicis.

§ 1. Only one diocesan Administrator is to be appointed, contrary customs being reprobated; otherwise the election is invalid.

§ 2. The diocesan Administrator is not to be at the same time the financial administrator. Accordingly, if the financial administrator of the diocese is elected Administrator, the finance committee is to elect another temporary financial administrator.

SOURCES: § 1: c. 433 § 1
§ 2: c. 433 § 3

424 **Administrator dioecesanus eligatur ad normam cann. 165–178.**

The diocesan Administrator is to be elected according to the norms of cann. 165–178.

SOURCES: cc. 432 § 2, 433 § 2

425 **§ 1. Valide ad munus Administratoris dioecesani deputari tantum potest sacerdos qui trigesimum quintum aetatis annum expleverit et ad eandem vacantem sedem non fuerit iam electus, nominatus vel praesentatus.**

§ 2. In Administratorem dioecesanum eligatur sacerdos, qui sit doctrina et prudentia praestans.

§ 3. Si praescriptae in § 1 condiciones posthabitae fuerint, Metropolita aut, si ipsa Ecclesia metropolitana vacans fuerit, Episcopus suffraganeus promotione antiquior, agnita rei veritate, Administratorem pro ea vice deputet; actus autem illius qui contra praescripta § 1 sit electus, sunt ipso iure nulli.

§ 1. Only a priest who has completed his thirty-fifth year of age, and has not already been elected, nominated or presented for the same see, can validly be deputed to the office of diocesan Administrator.

§ 2. As diocesan Administrator a priest is to be elected who is outstanding for doctrine and prudence.

§ 3. If the conditions prescribed in § 1 have not been observed, the Metropolitan or, if the metropolitan see itself is vacant, the suffragan senior by promotion, having verified the truth of the matter, is to appoint an Administrator for that occasion. The acts of a person elected contrary to the provisions of § 1 are by virtue of the law itself invalid.

SOURCES: § 1: c. 434 § 1
§ 2: c. 434 § 2
§ 3: c. 434 § 3

CROSS REFERENCES: cc. 10, 41, 119, 1°, 149 §§ 2 et 3, 150, 165–178, 377 § 5, 378 § 1, 3°, 492–494, 1278

COMMENTARY

Carlos Soler

These three canons regulate all the general aspects of the election of the diocesan administrator: procedure, conditions *ad validitatem* of the candidate, and the effect of non-compliance with these provisions.

1. Paragraph 1 of canon 423 invites us to briefly consider the history that, in passing, will help us to understand the essential features of the figure of the diocesan administrator according to the current Code.[1]

The problem of who takes charge of the governance of the diocese when it is vacant has always been posed, in that it could not be otherwise. In the first centuries, the *presbyterium* took charge of the diocese, that is, the presbyters who were closest to the bishop and who assisted him in the governance of the diocese. Soon the practice was introduced whereby the Metropolitan would appoint a visitator who governed the diocese, usually jointly with the presbyterium. However, in time, also due to the growing prestige of the cathedral chapters, the practice became that the gover-

1. For a concise outline of the history of this material, cf.: E. MOLANO, "El régimen de la diócesis en situación de sede impedida y de sede vacante," in *Ius Canonicum* 21 (1981), pp. 611–612; F.X. WERNZ-P. VIDAL, *Ius canonicum ad Codicis normam exactum. T.II: De personis* (Rome 1928), pp. 758–759; R. NAZ, "Vicaire capitulaire," in the *Dictionnaire de Droit canonique*; M. GORINO-CAUSA, "Vicario capitolare," in the *Nuovo Digesto italiano*.

nance of the diocese passed to the cathedral chapter, which was later set forth in the Decretals. In practice, the cathedral chapter did not used to govern collegially, but it used different procedures: establishing a panel or appointing one or more chapter vicars, to which it delegated the exercise of its power. Inasmuch as they were strictly vicars of the cathedral chapter, it was understood that the cathedral chapter could limit their power at will: appoint them *ad tempus*, establish conditions, restrict the scope of their power, etc. The Council of Trent established the obligation to appoint a cathedral chapter vicar. As the name itself indicates, he was only a vicar of the cathedral chapter. The proper power resided in the chapter itself. Given that the text of the Council was a bit ambiguous, some cathedral chapters understood that they could continue to appoint more than one vicar, give him limited power with regard to the time or scope, and, lastly, remove him *ad nutum*. The various dicasteries of the Roman Curia were imposing an interpretation of the Council of Trent text to the effect that the cathedral chapter could not limit the power of the vicar, neither with regard to time nor with regard to scope, nor appoint more than one vicar simultaneously.[2]

This interpretation was explicitly set forth in the Apostolic Constitution *Romanus Pontifex*, of Pius IX.[3] In this way, the so-called cathedral chapter vicar, in practice, was no longer a vicar of the cathedral chapter, which only enjoyed the power to elect him. This discipline was included in the *CIC*/1917. At present, the name *diocesan administrator* emphasizes that it is not vicarious. The college solely has the capacity to elect the diocesan administrator, but it is not understood that the administrator is a vicar of the college of consultors, nor that the college has proper power of governance of the diocese in the case of a vacant see, except as provided in the foregoing canons on the governance of the diocese until the appointment of the diocesan administrator.

In this situation, paragraph 1 of canon 423 establishes that only a diocesan administrator can be elected, and that, if not, the election is null, and contrary customs are reprobated.

If the person elected is the financial administrator of the diocese, he ceases as the financial administrator, and the finance committee must elect a temporary financial administrator (c. 423 § 2).

2. The election is governed by the norms of canons 165–178 (see the respective commentaries). Here we will only discuss one matter: these canons, as provided in canon 164, generally constitute supplemental law; is it also the case here? That is, are they only applied when there is a lack of particular law of the diocese or a statute of the college of consultors in

2. For a history of all the resolutions of the Sacred Congregation of the Council and the Bishops and regulars, cf. *Fontes* of GASPARRI, which covers many of the resolutions.

3. August 23, 1873. Cf. *Fontes* of GASPARRI, vol III, pp. 74–77.

question? It seems not to be the case here; that is, in the election of the diocesan administrator, universal law prevails over particular law, and that from particular law the only provisions applied are those that do not contradict canons 165–178. This precedence exists for three reasons, two having to do with the wording and the third being of a practical nature:

a) It is canon 164 that provides that the norms of this article are applied as subsidiary to those of particular or of legitimate statutes. But note that the reference of canon 424 specifically excludes canon 164 ("according to the norms of can. 165–178")

b) On the other hand, inasmuch as the provisions of the article on elections are general supplemental law, that is, they are to be applied generally to all elections except what is provided in particular law or the statutes, the reference of canon 424 would be redundant if we would consider that also in our case the norms of canons 165–178 are to be applied as subsidiary with regard to particular law or the statutes; that is, in order for it to be applied as supplemental law, it was not necessary for canon 424 to state it. Consequently, according to the wording, the effect of an express reference, in which canon 164—the one that establishes the subsidiary relationship—is also excluded, is precisely the suppression of the subsidiary nature from those canons when it is a matter of the election of the diocesan administrator.

c) Furthermore, the election of the diocesan administrator is not an intra-diocesan matter, but something that concerns the entire Church, and a grave matter, given that it is a question of designating who is to temporarily govern a diocese. It seems reasonable, therefore, that in this area priority is given to particular or statutory law over the norms of the code.

Nonetheless, the provisions, the subsidiary nature of which is specifically provided in the text of the respective canon, are still to be applied as a subsidiary. To be specific, canon 167 establishes that the statutes can provide that votes be cast by letter or by proxy; canon 174 § 1 acknowledges that statutes and particular law have the authority to provide that the election cannot be made by compromise; likewise, canon 176 admits that the statutes can establish a number of votes for an election to result other than what is indicated in canon 119, 1°. Furthermore, the specific norms contained in the article on the vacant see provide that the terms of canons 165 and 177 are not applicable for the election of the diocesan administrator; more than eight days may never lapse between the notice of the vacancy and the acceptance of the diocesan administrator.

3. Canon 425 § 1 establishes three conditions for the validity of the person appointed: being a priest, having completed his thirty-fifth year and not having been elected, nominated, or presented for the same see. What do "elected," "nominated," and "presented" mean? Some cathedral chapters, especially in central European countries, have the right to elect and present the future bishop to the pope. On the other hand, although now a

relic to a large extent thanks to *Christus Dominus* 20, in some countries, the civil authority has the right of presentation or even the nomination of bishops, according to a complex procedure that, of course, always requires the conferral of powers by the Roman Pontiff.In these particular cases, the election cannot fall to the person elected, nominated, or presented, under penalty of nullity. Obviously, the intent of this provision is to prevent the election of the diocesan administrator from being used as a measure to force his confirmation or institution as a diocesan bishop; that is, it is an attempt to protect the freedom of the Holy See in the confirmation or institution. The requirement for being a priest is consistent with canon 150, which states that the office with full care of souls cannot be validly conferred upon anyone who is not a priest. The age requirement of thirty-five years is consistent with the age required for the bishop (c. 378 § 1, 3°). One critical remark in this regard: continuity in the governance of the diocese will often make it advisable that the vicar general be elected as the diocesan administrator; canon 478 § 1 requires that the vicar general be at least thirty years old. Taking these two factors into account, it does not seem entirely consistent for the Code to require five years more of age, especially if the irritating effect of the election is added. It seems that anyone who can assume the office of vicar general is also qualified to temporarily assume the governance of the diocese. The *CIC*/1917 was more consistent in this regard, because it demanded the same age (thirty years) for both (cf. cc. 367 § 1 and 434 § 1 *CIC*/1917).

Two other conditions for the candidate ought to be kept in mind by the electors: doctrine and prudence (c. 425 § 2). Academic degrees are no longer required for the office, as before (cf. c. 434 § 2 *CIC*/1917), but the priest must be outstanding for his doctrine and also for his prudence.

4. If the election is null because any of the conditions for validity indicated in canon 425 § 1 (age, priesthood, and not having been nominated, elected, or presented) have been violated, the effect is not only nullity of the election, but also, the appointment of the diocesan administrator passes to the Metropolitan, even if the term of eight days for the college of consultors to elect has not yet elapsed, who shall do it by the free conferral procedure. The nullity of all acts performed by the person who had been invalidly elected as diocesan administrator is also provided.

426 **Qui, sede vacante, ante deputationem Administratoris dioecesani, dioecesim regat, potestate gaudet quam ius Vicario generali agnoscit.**

Whoever governs the diocese before the appointment of the diocesan Administrator, has the power which the law gives to a Vicar general.

SOURCES: c. 435

CROSS REFERENCES: cc. 134 §§ 1 et 2, 391, 419, 475, 479 §§ 1 et 3

COMMENTARY

Carlos Soler

Canons 426–428 determine the power held by the person who governs the diocese at the various moments when the see is vacant. Canon 426 refers to the person who governs the diocese before the appointment of the diocesan administrator; canon 427 refers to the diocesan administrator; and canon 428 refers to both, although for practical reasons it will be studied with reference to the diocesan administrator. Suffice it to say that what is said about that canon also affects the person who governs the diocese before the election of the administrator.

The person who governs the diocese before the election of the diocesan administrator does so with the power that law gives to the vicar general. For practical purposes, he has everything that the Code attributes to the "ordinary" or to the "local ordinary" (cf. c. 134), but not what is attributed to the "diocesan bishop." Furthermore, he has no legislative power, which canon 391 reserves for the diocesan bishop, but only executive power, which is what this same canon attributes to the vicar general. Even if, while alive, the bishop had usually reserved for himself some of the matters, or had, on the contrary, given to the vicar some of those areas that require a special mandate of the bishop, the power of the person who governs the diocese in the situation under discussion is the power that *by law* belongs to the vicar general, no more nor less by reason of those reserves or special mandates.

427 **§ 1. Administrator dioecesanus tenetur obligationibus et gaudet potestate Episcopi dioecesani, iis excludis quae ex rei natura aut ipso iure excipiuntur.**

§ 2. Administrator dioecesanus, acceptata electione, potestatem obtinet, quin requiratur ullius confirmatio, firma obligatione de qua *in can.* 833, *no.* 4.

§ 1. The diocesan Administrator is bound by the obligations and enjoys the power of a diocesan Bishop, excluding those matters which are excepted by the nature of things or by the law itself.

§ 2. The diocesan Administrator obtains his power on his acceptance of the election, without the need of confirmation from anyone, but without prejudice to the provision of can. 833 n. 4.

SOURCES: § 1: c. 435 §§ 1 et 2; SCCouncil Resp. III, 10 maii 1931 (*AAS* 23 [1931] 235); SCPF Resp. 3, 26.I.1954; Secr. St. Let., 26.XI.1963
§ 2: c. 438

428 **§ 1. Sede vacante nihil innoventur.**

§ 2. Illi quid ad interim dioecesis regimen curant, vetantur quidpiam agere quod vel dioecesi vel episcopalibus iuribus praeiudicium aliquod affere possit; speciatim prohibentur ipsi, ac proinde alii quicumque, quominus sive per se sive per alium curiae dioecesanae documenta quaelibet subtrahant vel destruant, aut in iis quidquam immutent.

§ 1. While the see is vacant, no innovation is to be made.

§ 2. Those who have the interim governance of the diocese are forbidden to do anything which could in any way prejudice the diocese or the rights of the Bishop. Both they, and in like manner any other persons, are specifically forbidden to remove, destroy or in any way alter documents of the diocesan curia, either personally or through another.

SOURCES: § 1: c. 436
§ 2: c. 435 § 3

CROSS REFERENCES: cc. 272; 312 § 1, 3°; 409 § 2; 429; 462 § 1; 468 § 2; 485; 490 § 2; 502 § 2; 509 § 1; 525, 2°; 833, 4°, 1018 §§ 2 et 3; 1420 § 5

COMMENTARY

Carlos Soler

We are now faced with the basic canons on the governance of the diocese during a vacant see, because they determine the power of the diocesan administrator. Because of its importance for the governance of the vacant see, we shall now consider the many aspects of that governance that are set forth in the various canons of the Code. In this way we seek to present in the commentary on these two canons an overview of the governance of the see once the diocesan administrator is elected.

1. We shall begin with paragraph 2 of canon 427: the administrator takes possession by merely accepting his election. Therefore, he does not need confirmation, although he must report his election to the Holy See (c. 422). The taking of possession is not conditional on the profession of faith, although he should do so, according to the provisions of canon 833, 4°, to which our canon refers.

2. Canon 427 § 1 establishes that the diocesan administrator has *the same obligations* and the same power as the diocesan bishop. The obligations of residence and celebration of the Mass for the people are expressly stated in canon 429 (cf. commentary). The other obligations (the *ad limina* visit, the diocesan canonical visitation) also devolve upon him, excluding those matters which are excepted by the nature of things, and taking into account that they may be adapted to the temporary condition characteristic of his mandate.

3. Let us now consider the power of the diocesan administrator. In this regard, there are two general principles, hierarchically ordered. The first is that all ordinary power of the diocesan bishop passes to the diocesan administrator; the second is the well-known principle of *sede vacante nihil innovetur.* One could get the impression that at times they are valued—and some act—as though this latter principle were primary, without realizing that the former has the primary importance: all the ordinary power of the diocesan bishop passes to the diocesan administrator.

a) Therefore, everything that devolves upon the bishop devolves upon the diocesan administrator, except what is prohibited by law or by the nature of things. Thus, for example, if one is not a bishop, he cannot perform any functions requiring the episcopal character. We will speak of the specific prohibitions provided by law later on. For now, let us make a practical observation: the person who governs the diocese before the diocesan administrator is appointed does so with the power that the law grants to the vicar general; therefore, everything that the Code attributes to the "ordinary" or the "local ordinary" devolves upon him but not what it attributes to the diocesan bishop.On the other hand, the diocesan adminis-

trator does have all the power that the Code attributes to the bishop, unless the nature of things prevents it or unless provided otherwise.

b) Now we will discuss the second principle, again stressing its subordination to the first one. What does *sede vacante nihil innovetur* mean? I believe it contains a prohibition and an approach to governing, and that, in turn, this approach works both ways.

In a 1981 article—therefore under the *CIC*/1917—Molano stated the following: "The correct interpretation of this principle requires that it be considered in its context and, therefore, with the aforementioned canons (especially c. 435), which try to set the boundaries of the scope of that jurisdiction. In this sense, it is evident that the innovations prohibited to the chapter Vicar (also the cathedral chapter, before the appointment of the Vicar, when he temporarily assumes the governance of the vacant see) must in fact refer to the illicit acts which also set forth in canon 435 § 3, under the following verbatim statement: 'Vicario Capitulari et Capitulo non licet agere quidpiam quod vel dioecesi vel episcopalibus iuribus praeiudicium aliquod afferre possit.'

"That is, they are acts that prejudge the later activity of the bishop in the diocese and can condition his action; moreover, evidently, those acts that prejudice or may prejudice the diocese itself, among which we could cite the provision of vacant benefices (including those of free conferral), transfer of assets, the elimination or modification of offices, etc.

"But it seems logical that the prohibition on innovations does not refer to those activities that presumably would be beneficial for the diocese and that may arise during the vacant see, because such acts would be required for the common good of the diocese. The supreme principle, to which the principle now under discussion: '*Sede vacante nihil innovetur*' would also be subordinate."[1]

Thus, following this author, we believe that the prohibition can only be interpreted in the light of concrete provisions; that is, it prohibits the diocesan administrator from introducing any innovation that may result in prejudice to the diocese or compromise the rights of the diocese or of the future bishop.

The problem is that, to a greater or lesser extent, every decision is at the same time innovative and risky.It is not easy to determine the line where acts that fall under this prohibition begin. In principle, grave decisions and those that modify the "structure" of the diocese (for example, a merger of parishes) must be avoided, unless it is felt that a delay—waiting for the arrival of the new diocesan bishop—may entail a greater evil than what could result from making the decision "now," in which case we believe that the decision would be lawful. We can state in general terms that

1. E. MOLANO, "El régimen de la diócesis en situación de sede impedida y de sede vacante," in *Ius Canonicum* 21 (1981), p. 615.

in everything not expressly provided, in the last analysis, the assessment of that matter devolves upon the prudential judgment of the diocesan administrator, except what a tribunal could later hypothetically decide. Furthermore, of course, the prohibition is not nullifying.

In view of the foregoing, it can seen that we have removed absolutely all proper potentiality from the principle under discussion. In fact, our interpretation tends to reduce the *virtus prohibitoria* of the principle to what is already expressly prohibited in other prescriptions; it also denies it the nullifying quality and attributes the *ad casum* application, in the last analysis, to the prudential discretion of the diocesan administrator himself. What occurs is that, in our opinion, the principle of *sede vacante nihil innovetur* is effective not only principally as a prohibition, but as a sensible principle of governance. Perhaps in some cases this principle makes certain acts of the diocesan administrator juridically illicit; however, in the last analysis, each situation must be treated individually and must be jurisprudentially established. The general effectiveness of the principle is not in that area, but in that of the practical approach to governance. In this sense, it functions as a generic invitation to non-intervention or to abstention. The diocesan administrator will consider which one is the proper approach. The principle will moderate, but not normally altogether eliminate his discretion in governance.

We stated that the principle, because it is an approach to governance, works both ways. We have already set forth the first, and now we will speak briefly about the second. , It seems that the diocesan administrator must, by virtue of this principle, seek to have everything function and continue to be decided *in the same way that it was usually done when the see was occupied.* That is, in all matters—be they pastoral, governmental, canonical, etc.—the administrator must bear in mind that his function is to provisionally guarantee the continuity of the governance of the diocese, and that therefore it is not appropriate for him to govern with an overly personal style. On the contrary, it is advisable that he adhere to the manner and style of governing of the previous bishop. In sum, it is an invitation that, during this interim period, the ordinary matters be governed with a focus on continuity. Changes can be made by the future bishop. Thus, for example, it would be normal—although not binding—for him to use as delegates for the various areas the same persons who were vicars of the bishop, vicars general or episcopal vicars, when the see was occupied.

In order to complete this attempt at interpretation, we are going to compare the potentiality of the principle in a vacant diocesan see and in a vacant papal see. The principle of *sede vacante nihil innovetur* operates differently when it is the Apostolic See, because in this case, there is no one who has "all the power of the Roman Pontiff." The expression itself is absurd. The governance of the Church passes to the College of Cardinals, but this college does not enjoy papal power. The bodies of the Curia or the

College of Cardinals can only decide essential ordinary matters that do not require the intervention of the Roman Pontiff (cf. *UDG* 1–26). This fundamental difference makes it impossible to establish analogies between one case and another, and also with regard to the interpretation and application of the principle under discussion.

I understand that these are the criteria. Due to the infrequency of this type of situation in the life of those called to be diocesan administrators, it may occur that excessive difficulties arise regarding what an administrator can and cannot do. In view of this issue, it is worth knowing that it devolves upon him to govern the diocese with all the power of the diocesan bishop, that in principle he can do everything that is not expressly prohibited (shortly we will see what these express prohibitions are). However, a good approach to governance leads one to take into account these two elements: continuity with the previous bishop's mode of governing, taking into account the temporary nature of his office; and not making grave decisions, which should be left for the future bishop, except in the event of a real emergency.

4. What are the specific limitations on the power of the diocesan administrator? Although they are dispersed through various parts of the Code, it is not appropriate to make a detailed commentary here, but rather in the appropriate places. It does seems advisable to at least mention them at this time. In this way we are seeking to draw in this commentary a complete practical picture of the situation and power of the diocesan administrator.

There are three types of limitations on the power of the diocesan administrator:[2] a) some actions are simply prohibited; b) regarding others, he is subject to certain restrictions that do not affect the diocesan bishop; c) lastly, others can only be carried out after a certain time has elapsed in the situation of a vacant see. As we shall see, some limitations combine the second and third types.

a) *Actions that are simply prohibited.* Canon 312 § 1,3° establishes that the diocesan bishop, but not the diocesan administrator, is the competent authority for establishing public diocesan associations. Canon 462 § 1 prevents him from convening a diocesan synod. According to canon 509 § 1, he cannot confer canonries in the cathedral church nor in a collegiate church. Canon 520 § 1 prevents the diocesan administrator from entrusting a parish to an institute of consecrated life. Canon 1018 § 2 prohibits him from giving dimissorial letters to those to whom admission to orders was refused by the bishop. Canon 1420 § 5 provides that the judicial vicar and the adjutant judicial vicars do not cease from office when the see is vacant, and that the diocesan administrator cannot remove

2. Cf. A. CORIDEN-T.J. GREEN-D.E. HEINTSCHEL, *The Code of Canon Law. A Text and a Commentary* (New York 1985), pp. 346–347.

them. Moreover, according to canon 1422, if, during the period of the vacant see, the mandate of these vicars ends—according to the canon just mentioned they are appointed for a specified period of time—they shall continue in office, as unequivocally inferred from the mention that canon 1422 makes of canon 1420 § 5 (the unequivocal reference is based on the fact that the mention is unnecessary unless it is interpreted in the meaning we are setting forth here).

b) Let us now consider the *canons that impose a restriction*. It is almost always the same: there is a need for consent from the college of consultors. Canon 485 requires it for removal of the chancellor and other notaries of the diocesan curia. Canon 1018 § 1, 2° requires it for dimissorial letters, but we must remember that they cannot be given to those who were rejected by the bishop, even with the consent of the college of consultors. Canon 272 establishes it for the granting of incardination or excardination and permission to move to another particular Church. A last restriction is that, by virtue of canon 490 § 2, he cannot open the secret archive or safe (cf. c. 489) except in the case of real necessity, and, if so, the diocesan administrator must do it personally.

c) Lastly, in some areas he can only exercise his competency after a year has elapsed from when the see became vacant. Thus canon 272 requires, for the granting of incardination, excardination, or permission to transfer, the lapse of one year from the vacancy, in addition to the consent of the college of consultors, as we have seen a few lines above. Canon 525, 2° requires the lapse of one year from the vacancy of the see in order to name parish priests by the free conferral procedure. Of course, in the meantime he can appoint parish administrators. From the beginning, he can grant the institution or the confirmation of priests that have been legitimately presented or elected for a parish (c. 525, 1°).

5. Of all the limitations enumerated, only two also affect the provicar and the pro-prefect in the prefectures and vicariates: the need for consent from the missionary council in order to grant dimissorial letters and the prohibition to grant them to those to whom they have been denied by the vicar or by the prefect (c. 1018; on the power of the pro-prefect or of the pro-vicar, cf. commentary on c. 420).

6. Other aspects of the vacant see situation deserve mention here. The diocesan synod is *ipso iure* suspended and can only be renewed by the future bishop (c. 468 § 2). The presbyteral council ceases in its functions and is substituted by the college of consultors (c. 501 § 2). The diocesan pastoral council also ceases, according to canon 513 § 2. The diocesan administrator presides over the college of consultors (c. 502 § 2). Lastly, let us recall that the vicars general and the episcopal vicars cease in their offices, unless they are auxiliary bishops. But good governance normally makes it advisable that they be delegates of the diocesan administrator for the same areas.

429 Administrator dioecesanus obligatione tenetur residendi in dioecesi et applicandi Missam pro populo ad normam can. 388.

The diocesan Administrator is bound by the obligations of residing in the diocese, and of applying the Mass for the people in accordance with can. 388.

SOURCES: c. 440

CROSS REFERENCES: cc. 388, 395, 427

COMMENTARY

Carlos Soler

The obligations of the diocesan administrator are the same as those of the bishop (cf. c. 427 § 1). The Code wanted to specify in this canon the obligation of residence and that of celebrating the Mass for the people. With regard to celebrating Mass *pro populo*, the same canon refers to canon 388, which defines the terms of the obligation of the bishop (cf. commentary on c. 388). On the content of the obligation of residence, see the commentary on canon 395.

430 **§ 1. Munus Administratoris dioecesani cessat per captam a novo Episcopo dioecesis possessionem.**

§ 2. Administratoris dioecesani remotio Sanctae Sedi reservatur renuntiatio quae forte ab ipso fiat, authentica forma exhibenda est collegio ad electionem competenti, neque acceptatione eget; remoto aut renuntiante Administratore dioecesano, aut eodem defuncto, alius eligatur Administrator dioecesanus ad normam can. 421.

§ 1. The office of the diocesan Administrator ceases when the new Bishop takes possession of the diocese.

§ 2. Removal of the diocesan Administrator is reserved to the Holy See. Should he perchance resign, the resignation is to be submitted in authentic form to the college which is competent to elect, but it does not require acceptance by the college. If the diocesan Administrator is removed, resigns or dies, another diocesan Administrator is to be elected in accordance with can. 421.

SOURCES: § 1: c. 443 § 2
§ 2: c. 443 § 1

CROSS REFERENCES: cc. 187–189, 192–196, 419, 421–426

COMMENTARY

Carlos Soler

This canon discusses the cessation of the diocesan administrator. We should emphasize that his removal is reserved to the Holy See. Furthermore, inasmuch as the administrator cannot be appointed *ad tempus*, a cessation due to the lapse of time is not appropriate. The normal method of ceasing from office is the arrival of the new bishop of the diocese. Let us specify that, as stated in canon 430 § 1, the administrator does not cease with the appointment of the new bishop, but with his taking of possession. This is logical, because until that moment, the bishop cannot become involved in the governance of the diocese (cf. c. 382 § 1). If the diocesan administrator himself should be named bishop, until his taking of possession, he cannot exercise his office as a diocesan bishop but as a diocesan administrator. Any resignation must be submitted to the college of consultors, but it does not require their acceptance.

When the diocesan administrator ceases from office for a reason other than the taking of possession by the bishop (death, resignation, or removal by the Holy See), the procedure for the vacant see situation begins again: a new diocesan administrator must be appointed according to canon 421 and the other canons regulating his election. The obligation to inform the Holy See of the vacancy also remains.

TITULUS II
De Ecclesiarum particularium coetibus

TITLE II
Groupings of particular churches

INTRODUCTION

Juan I. Arrieta

The rubric of the present title—*De Ecclesiarum particularium coetibus*—is not applied in the same sense to all the figures it comprises. While both the ecclesiastical province and the region (of which we shall shortly make special mention) may indeed be properly called groupings of particular churches (see commentary on c.368), other institutions of this title, such as the office of metropolitan or particular councils, also correspond to these respective fields of jurisdiction. A bishops' conference is not actually a grouping of ecclesiastical circumscriptions, but a meeting of bishops, or rather, an instance for coordinating episcopal offices and functions.

1. *Two different organizational criteria*

The distinction we have just pointed out accounts, in the first place, for the differing nature of the institutions being dealt with here. The coexistence, throughout the present title of the *CIC*, of two different organizational and coordination criteria must be recognized as well. Some institutions having greater historical tradition, such as the ecclesiastical province or the office of metropolitan, still contribute—though with a juridical significance which has diminished quite noticeably—to the idea of a hierarchical nature for coordination and control among ecclesiastical instances. Other figures, postulated in a permanent manner and united by the bond of episcopal collegiality, such as the bishops' conference or the *coetus episcoporum* of the ecclesiastical region, can be classified as instances of peer-coordination among members of the episcopate on the basis of their collaboration and mutual assistance in the government of the particular churches.

It should be noted that at present the latter organizational criterion, which might be termed collegial, in the sense previously pointed out,[1] extends to purposes of governance, but not to the structures themselves, which are in force in other more traditional figures. These institutions—for example, the *conventus episcoporum* of the province (cf. commentary on c. 432)—can thereby, from the perspective of their activity, be considered collegial.

In general terms, it could be said that norms of the *CIC* do not attempt an exhaustive treatment of the juridical dimension inherent in the relations among bishops—both informal and institutional—regarding the fulfillment of their governance functions in the dioceses or in other ecclesiastical circumscriptions. From the sacramental perspective of the episcopate, and from the subsequent manner in which the function of governance is to be exercised in episcopal offices, there are, indeed, some demands of justice that need, as yet, to be clearly demonstrated in canon law. Hopefully, both time and correct practice will gradually indicate the appropriate way to balance the demands of the episcopal collegiality and the co-responsibility in exercising the episcopal function with the no less necessary autonomy in governance of each ecclesiastical circumscription, required by the responsibility incumbent on the holder of the respective capital office.

Indeed, the nature and activity of bishops' conferences have posed, with particular clarity, this type of problem. The correct positioning of bishops' conferences, which would certainly clarify the overall scenario here indicated, should be understood, in our opinion, as the institution's development, both in structure and in operation, consistent with its condition as an "assembly of bishops." Thus the respective pastors, in the exercise of their capital offices, will be the ones who afterward transmit the concrete outcome of their episcopal cooperation to their faithful.

2. *Ecclesiastical province*

The ecclesiastical region and the province (cc. 431–434) are two types of supra-diocesan unions of particular churches and, in general, of ecclesiastical circumscriptions. They both aim to coordinate pastoral governance in geographically close circumscriptions, and to achieve certain common objectives by creating a higher territorial entity. The status of these entities as a unitary demarcation will depend, among other things, on how they are constituted, and on the juridical characteristics of the unitary principle of authority assigned to them. In spite of their being institutions which, as we shall further see, are related to each other, the eccle-

1. Cf. J.I. ARRIETA, "Conferenze episcopali e vincolo di comunione," in *Ius Ecclesiae* 1 (1989), pp. 3–22.

siastical region and the province have different juridical regimes in the canonical system. This distinction can be explained by taking into account the different history each figure has, the different juridical elements involved in each, and the different doctrinal problems underlying each of them.[2]

Grouping dioceses into ecclesiastical provinces was first done in the East in the late Second century, and then in the West towards the Fourth century. These divisions paralleled the civil organization of the Roman Empire into provinces, and came about as a consequence of the expansion of the Christian faith toward new places from the urban communities (*metropolis*) where it originated.[3] From this evangelization emerged new autonomous communities with their own pastors, yet still linked to the mother Church (metropolitan see), which had a series of rights over suffragan churches. The consolidation of this organizational model, and the generalization thereof to the whole Church, gave rise to the institution that is known today as an ecclesiastical province, in which, despite the historical vicissitudes and changes in the applicable juridical regime, the organizational elements typical of the beginning have been maintained: *a)* grouping of neighboring dioceses; *b)* distinction between the metropolitan and suffragan sees; and *c)* supremacy of the metropolitan see.

The figure of the ecclesiastical province was not systematically dealt with in the *CIC*/1917. Similarly, dioceses and other circumscriptions were not dealt with directly. The *CIC*/1917 merely pointed out the powers of the metropolitan over suffragan churches and considered other relevant institutions at the level of the ecclesiastical province, particularly the provincial council, which every twenty years would gather all the ordinaries of the province with the rest of the participating ecclesiastics (cf. cc. 283ff *CIC*/1917) and the *conventus provincialis*, or meeting of the ordinaries—and only them—from the province, which had to be called at least every five years (c. 292 *CIC*/1917).

During the work of the Second Vatican Council, the ecclesiastical province merited only indirect interest, with other disciplinary and doctrinal issues being regarded as of greater significance. Thus, the redefinition of the juridical attributions of the metropolitans on suffragan churches was advocated, bearing in mind the *iure divino* power of diocesan bishops. Likewise, in order to strengthen collegial cooperation among bishops of neighboring dioceses, the suitability of suppressing the category of a

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2. Cf. J.I. ARRIETA, "Instrumentos supradiocesanos para el gobierno de la Iglesia particular," in *Ius Canonicum* 24 (1984), pp. 607–643.

3. Cf. R. NAZ, "Province ecclésiastique," in *Dictionnaire de Droit Canonique*, VII (Paris 1965), col. 397–398; M. COSTALUNGA, "L'organizzazione in provincie e regioni ecclesiastiche," in *Ius Canonicum* 22 (1982), p. 762; J. PROVOST, "Groupings of Particular churches," in *The Code of Canon Law* (New York 1985), pp. 350–353; G. DALLA TORRE, art. "Provincia ecclesiastica," in *Enciclopedia del Diritto*, XXXVII (Milan 1988), pp. 811–816; J.L. GUTIÉRREZ, "I raggruppamenti di Chiese particolari," in *Monitor Ecclesiasticus* 116 (1991), pp. 437–455.

diocese exempt from metropolitan jurisdiction, that is to say, from direct dependence on the Holy See, was pointed out. And so, the definitive resolutions of the Second Vatican Council regarding the ecclesiastical provinces gathered in the *Christus Dominus* 40 centered on: *a)* a review of the boundaries of provinces and, above all, of the powers of metropolitans; and *b)* the determination that every diocese had to be framed within a provincial circumscription.

As a consequence of council deliberation (strongly influenced by the Second Vatican Council's teaching on the episcopate), which, through the *Motu proprio Ecclesiae sanctae*, I, 42, has inspired the discipline of the *CIC* on the matter, the core of both management and government of the ecclesiastical province has shifted from the metropolitan office to the pastoral cooperation among bishops. That means that the gradual erosion of the jurisdictional power of the metropolitan has pushed into the background the consideration of the ecclesiastical province as "territorial demarcation" over which the metropolitan archbishop exerts his power. At the same time, at least from an operative point of view, the idea of a province as an instance for the cooperation and coordination of bishops from neighboring dioceses has been stressed.

For the most part, the subsequent changes to the figure during the revision of the *CIC*/1917 followed the same trend and configured the province as an instance of episcopal self-coordination.[4] Furthermore, during the review process of the *CIC*/1917, problems regarding the ecclesiastical province were very closely related to the juridical configuration of the ecclesiastical region.

3. *The ecclesiastical region*

The figure of the ecclesiastical region had no precedents in the *CIC* 1917. As a temporary grouping of ecclesiastical provinces, the way canon 433 § 1 conceives the figure, the institution underwent a gradual evolution throughout the debates on *Christus Dominus* and, above all, during the revision of the *CIC*/1917 which, in its different phases and schemata, contained various concepts of ecclesiastical region.

In juridical practice, the closest precedent of the figure can be traced back to the pastoral regions into which Italian dioceses were divided in 1919[5] in order to hold the regional councils prescribed by canon 283

4. Cf. Code Commission, *Schema Canonum Libri II De Populo Dei*, c. 186 §3 (Typis polyglottis Vaticanis 1977), p. 83.

5. Cf. *SCCong*, Decr. *Pro celebratione conciliorum et appellationibus in regionibus italiae*, February 15, 1919, *AAS* 11 (1919), pp. 72–74; idem, Lettera circolare *all'episcopato italiano in esecuzizone del decreto "Pro conciliorum celebratione in regionibus italiae" del 15 febbraio 1919*, March 22, 1919, *AAS* 11 (1919), pp. 175–177.

CIC 1917 (due to the peculiar configuration of the Italian ecclesiastical organization). In the first schemata of what would become the *Christus Dominus*, canon 281 of the *CIC*/1917—which provided that several neighboring ecclesiastical provinces could meet in plenary council, with the authorization of the Roman Pontiff—was indicated as a normative precedent which implied an underlying grouping of particular churches higher than the province, even though said canon had little to do with a real territorial demarcation as the ecclesiastical province. In any case, the final text of *Christus Dominus* merely notes the expediency of setting up ecclesiastical regions where pastoral needs render it appropriate. In this way, the figure is conceived as the stable union of neighboring ecclesiastical provinces, the juridical regulation of which is subject to a further set of norms (cf. *CD* 39–40).

From that moment on, during the review of the *CIC*/1917, the juridical configuration of the ecclesiastical region suffered, as mentioned above, successive swings (as can be verified by comparing the successive working schemata) mostly due to the evolution that some elements within the figure were undergoing in those years. Said process concluded in the text of canon 433 with a return to the concept contained in council documents.[6]

The debate on the concept of ecclesiastical region during the revision of the *CIC*/1917 involved mainly two elements: first, the juridical position that national bishops' conferences should hold within the region, as an intermediate instance between dioceses and the Apostolic See; and second, related to the former, the issue of whether bishops' conferences needed to have their "own territory" assigned in order to perform their functions.

In the first schemata of the *CIC* revision, the ecclesiastical region was conceived as a necessary "circumscription"—not only facultative, as the *Christus Dominus* stated—integrating all the ecclesiastical provinces of the same nation, over which the national bishops' conference exerted its authority in a collegial way.[7] This approach was by then integrated in a perfectly organic and pyramidal view of the ecclesiastical organization at a national level: the territory of each country was identified with the ecclesiastical region; the region could also be divided into *districts*—if countries with a high number of dioceses were involved; and *districts* were also divided into ecclesiastical provinces. In charge of those three supra-

6. Cf. J.L. GUTIÉRREZ, "I raggruppamenti...," cit., pp. 449ff; J.I. ARRIETA, "Instrumentos supradiocesanos...," cit., pp. 623ff.

7. Cf. *Comm.* 4 (1972), p. 43; Code Commission, *Schema Canonum Libri II De Populo Dei*, c. 187 (Typis polyglottis Vaticanis 1977), p. 83.

diocesan circumscriptions were bishops' conferences, either national, district or provincial,[8] which were organically related among themselves.

Such an approach actually encompassed two different realities: on one hand, it configured a series of territorial ecclesiastical demarcations—region, district, province—which were groupings of particular churches; on the other hand, it created a series of collective governance instances, organically linked among one another—regional, district, and provincial bishops' conferences—which were sectional meetings of the member bishops of national bishops' conferences and, ultimately, the organizations dependent on their own national Conferences.

In the schemata of the *CIC*/1917 revision, that whole organizational model—and, in general, the whole set of figures that at present contains title II, "Groupings of Particular churches"—had been systematically placed after the canons regarding the supreme authority of the Church, that is to say, before bishops and particular churches were dealt with. In this way, the structural significance of all of those intermediate instances—provinces and regions, metropolitan, bishops' conference, etc.—seemed to be strengthened, in contrast with the line followed by the Second Vatican Council, regarding the authority and power of diocesan bishops.

Widespread opposition to this whole organizational model, aside from resulting in a strong reduction of the competence that bishops' conferences had been vested with in previous schemata, led to the reintroduction of the concept of ecclesiastical region according to the terms of *Christus Dominus*. In the first place, the *Schema codicis* from 1980 restored the original condition of a non-necessary but functional institution to the figure of ecclesiastical region if *utilitas id suadeat*.[9] Thereby, the consideration that the ecclesiastical region should be an element integrating the bishops' conference was abandoned, thus overcoming the erroneous idea that it was necessary to circumscribe a territory so that the conference could exercise jurisdiction. Its scope of action corresponds to that of the dioceses, the bishops of which are part of the Conference.[10]

In the final revisions to the text, the systematics of the *Schema de populo dei* was replaced by another that properly took into account the fact that the pillars of the ecclesiastical hierarchy are the Roman Pontiff and the bishops,[11] which is the reason for the groupings of particular churches, and the offices and institutions relevant thereto, further held the systematic position they nowadays hold in the *CIC*.

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8. Cf. Code Commission, *Schema Canonum Libri II De Populo Dei*, cc. 186 §3, 187 (Typis polyglottis Vaticanis 1977), p. 83.
9. Cf. *Comm.* 12 (1980), pp. 246–247.
10. Cf. *Comm.* 12 (1980), pp. 248–249.
11. Cf. *Comm.* 12 (1980), p. 244.

In the last phase of the revision work, while underlining the pastoral nature that the reasons advocating the erection of ecclesiastical regions should have, the spatial scope to which the concept corresponded was completely corrected: the region would no longer encompass a nation, but several ecclesiastical provinces within a territorial vicinity.[12]

12. Cf. *Comm.* 12 (1980), pp. 247–249.

CAPUT I
De provinciis ecclesiasticis et de regionibus ecclesiasticis

CHAPTER I
Ecclesiastical Provinces and Ecclesiastical Regions

431 **§ 1. Ut communis diversarum dioecesium vicinarum, iuxta personarum et locorum adiuncta, actio pastoralis promoveatur, utque Episcoporum dioecesanorum inter se relationes aptius foveantur, Ecclesiae particulares viciniores componantur in provincias ecclesiasticas certo territorio circumscriptas.**

§ 2. Dioeceses exemptae deinceps pro regula ne habeantur; itaque singulae dioeceses aliaeque Ecclesiae particulares intra territorium alicuius provinciae ecclesiasticae exsistentes huic provinciae ecclesiasticae adscribi debent.

§ 3. Unius supremae Ecclesiae auctoritatis est, auditis quorum interest Episcopis, provincias ecclesiasticas constituere, supprimere aut innovare.

§ 1. Neighbouring particular Churches are to be grouped into ecclesiastical provinces, with a certain defined territory. The purpose of this grouping is to promote, according to the circumstances of persons and place, a common pastoral action of various neighbouring dioceses, and the more closely to foster relations between diocesan bishops.

§ 2. From now onwards, as a rule, there are to be no exempt dioceses. Accordingly, individual dioceses and other particular Churches which exist within the territory of an ecclesiastical province, must be included in that ecclesiastical province.

§ 3. It is the exclusive prerogative of the supreme authority in the Church, after consulting the bishops concerned, to establish, suppress or alter ecclesiastical provinces.

SOURCES: § 1: *CD* 40, 1
§ 2: *CD* 40, 2
§ 3: c. 215 § 1; *CD* 41; *ES* I, 42

CROSS REFERENCES: cc. 333 § 1, 371, 432, 435, 436

COMMENTARY

Juan Ignacio Arrieta

1. The ecclesiastical province is an ecclesiastical territorial demarcation or circumscription that groups several neighboring dioceses under the presidency of one of the sees. The see that presides over the province is called the metropolitan see, and is occupied by the metropolitan archbishop; the other sees of the province are said to be suffragans of the first, and normally are entrusted to diocesan bishops.

The institution fulfills two principal functions. The first is to obtain coordination in the governing activity of the bishops who, being in charge of neighboring dioceses, confront common pastoral problems that are affected by the governing activities of the other pastors.[1] This function of coordination among bishops is doctrinally supported by the collegial dimension of the episcopate.[2] The second function that the province accomplishes is the configuring of an instance of protection and juridical control into the ecclesiastical office of metropolitan archbishop by endowing it with jurisdiction over the entire ecclesiastical province, particularly in reference to assuring an upright exercise of ecclesiastical authority within it.

Even though it is an institution of ecclesiastical law, the province is a necessary figure for two reasons. On one hand, organization of the Church into provinces is not facultative (as, in contrast, happens with organization into ecclesiastical regions), nor can it be applied partially only to one part of the Church. On the other hand, the figure is necessary because, in principle, all dioceses should be contained within a province, thereby duly avoiding the creation of dioceses exempt from metropolitan jurisdiction, as was indicated in Vatican Council II (*CD* 40, 2).

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1. Cf. G. FERROGLIO, *Circoscrizioni ed enti territoriali della Chiesa* (Turin s.f. 1946), pp. 21ff; J.I. ARRIETA, "Provincia y Región eclesiásticas," in *Le nouveau code de droit canonique. Actes du Ve Congrès International du Droit Canonique*, II (Ottawa 1986), pp. 607–625; G. DALLA TORRE, art. "Provincia ecclesiastica," in *Enciclopedia del Diritto*, XXXVII (Milan 1988), pp. 814–815.

2. Cf. J.I. ARRIETA, "Instrumentos supradiocesanos para el gobierno de la Iglesia particular," in *Ius Canonicum* 24 (1984), pp. 638–643.

2. In any case, when dealing with exemption from metropolitan jurisdiction, it is necessary to distinguish two juridically different situations: on one hand, the situation of the dioceses *immediatamente soggette* to the Holy See, and on the other, the case of the vicarious circumscriptions of the Roman Pontiff.

a) The dioceses *immediatamente soggette* are those sees—episcopal or archiepiscopal—that, for reasons of a pastoral, historical, and political nature, as well as others, are not encompassed in an ecclesiastical province, and therefore do not depend on the control of any metropolitan, but directly on the Holy See. The cases to which this regime of exemption has been applied are varied, and do not respond to strict rules. Nevertheless, the majority of the cases of dioceses *immediatamente soggette* can be explained by three fundamental reasons:

— dioceses that encompass all the territory of a nation or colony (i.e., the case of Luxembourg, Monaco, Hong Kong, Gibraltar, etc.);

— when historico-political reasons advise it: for example, the case of the dioceses of Metz and Strasbourg, an object of contention between France and Germany, or the case of the Swiss Confederation, all of which are directly dependent on the Holy See;

— moreover, some archiepiscopal sees of a particular pastoral entity are dioceses *immediatamente soggette*, like Barcelona, Marseilles, Canberra, etc.[3]

b) Because of different motivations, *vicarious circumscriptions* are likewise not grouped into ecclesiastical provinces. In effect, the missionary jurisdictions of a prefect or apostolic vicariate nature, and even in apostolic administration, the power of the holder of the chief office—prefect, vicar, etc.—has the vicarious power of the Roman Pontiff, who is, in reality, the pastor proper to the circumscription in question (cf. commentary on c. 371). Therefore, as a general rule—there are pastoral reasons that determine in specific cases another practical course of action[4]—these circumscriptions are not grouped into provinces, since it is not conceptually easy to justify the interposition of the metropolitan jurisdiction into the existing vicarious relationship between the Roman Pontiff and the respective chief office.

3. The *CIC* says nothing with respect to the scope of the ecclesiastical province, and therefore it is left to the assessment of the supreme authority. On this point, the juridical practice is flexible. Although the general rule is that the ecclesiastical province encompasses dioceses of the same country, provinces also exist that group together two or more countries (South Africa, Antilles). The same can be said of rite: though the

3. Cf. M. COSTALUNGA, "L'organizzazione in provincie e regioni ecclesiastiche," in *Ius Canonicum* 22 (1982), p. 762.

4. Cf. *Estatutos de la Conferencia Episcopal de Colombia*, art. 19, b.

province is an institution of the Latin Church, Churches of Eastern Rite (India) have, on occasion, been integrated into ecclesiastical provinces.[5]

Whatever the case, it seems that the range of the province should be in relation to the homogeneous configuration of the pastoral situation of the dioceses that comprise it. It is a matter of a set of problems in which factors of a diverse nature recur—historical, cultural, political, religious, etc.—that throughout time can exercise a modifying influence on their pastoral situation. Therefore, perhaps the geographical range of the ecclesiastical provinces should be considered changeable, and it seems necessary to confirm their real suitability to the pastoral form of the dioceses.

From this point of view, the meetings and spontaneous initiatives of the bishops of neighboring dioceses deserve attention even though they are in different ecclesiastical provinces. Apart from the modification of the boundaries of provincial circumscription (a question related to prudential reasons and to the suitabilty of their being combined in each case), the concerted actions of the bishops of different provinces, if they are due to objective pastoral needs and have the support of the Holy See, seem to be able to help to correct the rigidity of institutional forms, which are at times determined by factors not entirely religious.

Some great metropolis, whose diocesan see, by following the provisions of *Christus Dominus* 22, 23, has been dismembered by forming new dioceses, which are constituted as a province around the original diocese, represent a particular case of ecclesiastical province.[6] In such cases, the coordination of pastoral action can be realized with the normal elements of the province, or can also be ratified through the granting of special faculties to the metropolitan (c. 436 § 2).

4. In any case, it falls to the supreme authority of the Church to constitute or modify ecclesiastical provinces (cf. cc. 333 § 1, 431 § 3). Such exclusive competence due to, among other things, the dictate of *Christus Dominus* 8, since the creation of the office of metropolitan, inherent to provincial structure, introduces an evident determination of the power of the diocesan bishops, which only the Roman Pontiff can carry out.

The erection or modification of the ecclesiastical provinces follows a mechanism analogous to that employed for other ecclesiastical circumscriptions, and, depending on the case, the competent authority is either the Congregation for Bishops (*PB* 76) or the Congregation of *Propaganda fide* (*PB* 89). Canon 431 § 3 attributes to the interested bishops the right to participate in a consulting role in the relative administrative proceeding, in place of the bishops' conference, as, however, *Motu proprio Ecclesiae sanctae* 1, 42 indicated.

5. Cf. *Statutes of the Catholic Bishop's Conference of India*, art. 59, Appendix V.
6. Cf. J.I. ARRIETA, "Instrumentos supradiocesanos...," cit., pp. 633–638.

432 § 1. In provincia ecclesiastica auctoritate, ad normam iuris, gaudent concilium provinciale atque Metropolita.

§ 2. Provincia ecclesiastica ipso iure personalitate iuridica gaudet.

§ 1. The provincial council and the Metropolitan have authority over the ecclesiastical province, in accordance with the law.

§ 2. By virtue of the law, an ecclesiastical province has juridical personality.

SOURCES: § 1: c. 272; *CD* 40, 2
§ 2: cc. 99, 100 § 1

CROSS REFERENCES: cc. 377, 395 § 4, 413, 415, 421, 425, 431, 435, 436, 437 § 2, 442, 467, 501, 952 § 1, 1264

COMMENTARY

Juan Ignacio Arrieta

The list made by canon 432 § 1 is not exhaustive, for besides the office of metropolitan and the provincial council mentioned here, the *CIC* itself grants authority for *conventus episcoporum* of the bishops of the province, to which, moreover, are attributed some juridical competences over the province.

1. The metropolitan, or office holder of the metropolitan see, is an archbishop, but not every archbishop occupies a metropolitan see.[1] There are sees with the rank of archbishop that are not metropolitan sees and, therefore, they do not attribute to their holders special circumstances of power, being only a special honorific rank and title. Frequently they are sees *immediatamente soggette* to the Apostolic See (cf. commentary on c. 431), but there exist as well archepiscopal sees that are suffragans to a metropolitan. Sometimes, even all the sees of one ecclesiastical province have archiepiscopal rank, such as the ecclesiastical province of Tyre in Lebanon.

1. Cf. M. PETRONCELLI, art. "Arcivescovo," in *Enciclopedia del Diritto*, II (Milan 1958), pp. 1036–1037; L. SPINELLI, "Metropolita," in *Novissimo Digesto Italiano*, X (Turin 1964), p. 606; A. GIACOBBI, "Strutture di comunione tra le Chiese particolari," in *Il diritto nel mistero della Chiesa*, II, pp. 523–554.

Throughout history, the office and jurisdiction of the metropolitan has fused the ecclesiastical province into a unitary whole as far as circumscription is concerned.[2] Thus, the gradual diminution of the juridical power of the metropolitan, together with the predominance of the activity of spontaneous pastoral coordination of the bishops of the province, can in fact lead to a less and less hierarchical determination of this figure.[3]

The metropolitan archbishop, besides having the power to carry out sacred functions in all the churches of the province (c. 436 § 3) and to use therein the pallium corresponding to his rank (c. 437 § 2), possesses a limited jurisdiction over the suffragan diocese that, as has been said, fulfills the goal of guaranteeing the exercise of ecclesiastical governance in the entire province.[4] Based on that jurisdiction, within the range of the province, the metropolitan performs the following:

— *functions of presidency*, over the province itself (c. 435), the *conventus episcoporum*, and the provincial counsel (c. 442 §§ 1 and 2);

— *functions of vigilance and information*, accounting to the Holy See for unlawful absences of suffragans (c. 395 § 4), the situation of a see hindered by a penalty (c. 415), or for the general state of the faith and ecclesiastical discipline in the suffragan dioceses (c. 436 § 1,1°);

— *functions of substitution*, by carrying out the canonical visit of the suffragan dioceses if the respective bishop has neglected it (c. 436 § 1,2°), by proceeding directly to the designation of diocesan administrator when the *coetus* in charge of electing him—normally the college of consultors—has not done so in a reasonable amount of time (c. 421 § 2; c. 436 § 1,3°), or has done so contrary to law (c. 425 § 3; c. 436 § 1,3°);

— *functions of communication and consultation*, for it is the duty of the suffragan bishops to communicate to the metropolitan the list of candidates that have been established for the case of an impeded see (c. 413 § 1), to transfer to him the minutes of the diocesan synods (c. 467), or to consult with him before proceeding to dissolve a presbyteral council (c. 501 § 3).

2. In the institutional context of the ecclesiastical province, besides the authority that, by office, the metropolitan exercises over the suffragan

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2. Cf. J.I. ARRIETA, "Provincia y región eclesiásticas," in *Le nouveau Code de droit canonique. Actes du Ve Congrès Internationale du droit canonique*, II (Ottawa 1986), pp. 607–625.

3. Cf. F. RAMOS, "Reflexiones en torno al título 'de las agrupaciones de Iglesias particulares,'" in *Iglesia universal e Iglesias particulares. Actas del IX Simposio internacional de teología* (Pamplona 1989), pp. 671ff.

4. Cf. G. DALLA TORRE, art. "Provincia ecclesiastica," in *Enciclopedia del Diritto*, XXXVII, (Milan 1988), pp. 813–814; C. CARDIA, *Il governo della Chiesa* (Bologna 1984), p. 165; J.L. GUTIÉRREZ, "Organización jerárquica de la Iglesia," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona), 1991, pp. 405–407; G. FELICIANI, *Le basi del diritto canonico* (Bologna 1984), p. 91.

sees, likewise the personal authority attributed to a suffragan bishop who is more senior by promotion must be considered, not with respect to the whole province—over which he exercises no power—but exclusively over the metropolitan see that, one might say, is the only one that is at the margin of the juridical control of the ecclesiastical province.

In this context, the law grants to the bishop of more seniority in promotion (c. 421 § 2) some of the functions regarding the metropolitan see that the metropolitan has with respect to the entire province: specifically and only those most directly aimed at avoiding vacuums of power in the metropolitan see. Thus, the task of informing the Apostolic See of unlawful prolonged absences of the metropolitan (c. 395 § 4) falls to him, or regarding the situation of a metropolitan impeded by penalties (c. 415); or the task of directly designating the diocesan administrator of a vacant metropolitan see if the *coetus* in charge of choosing him does not proceed timely to his designation (c. 421 § 2), or if it has done so irregularly (c. 425 § 3). The metropolitan should moreover consult him before dissolving the presbyteral council of the diocese (c. 501 § 3).

3. Besides these instances, the *CIC* grants to the *conventus episcoporum*, as well, authority over the province. The *conventus episcoporum* of the province is the meeting of all the diocesan bishops and the other ordinaries that, in a stable or temporary manner, are in charge of ecclesiastical territorial circumscriptions grouped into provinces. The *CIC* does not specifically classify this *conventus episcoporum* as a juridical figure in the strict sense, but the canonical system affords it a certain subjectivity by attributing to it the task of carrying out one of the principal institutional goals of the province—that of promoting pastoral action in common—and by granting it, moreover, some specific juridical competences to be exercised collegially, that is, according to the rules established for those cases by c. 119. In some countries, the statutes of the bishops' conference foresee the organic integration of these *conventus episcoporum* presided over by the respective metropolitan within the structure of the national Conference.[5]

Moreover, though canon 431 § 1 speaks only of diocesan bishops, it seems difficult to exclude coadjutors and auxiliaries from taking part in the meetings of these *conventus*. In strict juridical terms, this poses the problem of the participation of the consultors and auxiliaries in the making of decisions, in relation to c. 119. Lacking other norms, it seems that this should be resolved by following criteria analogous to critera that serve in each diocese to establish the participation of such bishops in the decisions of governance.

5. Cf. *Estatutos de la Conferencia Episcopal de Chile*, arts. 29, 30; *Estatutos de la Conferencia Episcopal de Colombia*, art. 19.

Specifically, the canon system attributes to the *conventus episcoporum* of the ecclesiastical province the following tasks:

— *functions of coordination* of pastoral action in the province (c. 431 § 1);

— *functions of proposing* suitable subjects for the episcopate, by having to compile a list of possible candidates every three years (c. 377 § 2). In contrast, for the specific provision of the see of the province, or to appoint consultor bishops in them, it seems that the metropolitan and the suffragans should be questioned separately and not as a *coetus* (c. 377 § 3);

— *deliberative functions* to fix, within the range of the province, the economic payments related to the exercise of the ecclesiastical ministry. Specifically, the *conventus* should establish by decree what the offering for Mass should be (c. 952 § 1) or other offerings tied to the administration of the sacraments (c. 1264, 2°), as well as the rates relative to the exercise of administrative power or to the execution of the rescripts of the Holy See (c. 1264, 1°).

4. The ecclesiastical province obtains *ipso iure* juridical personality in the canonical order from the moment of its constitution. By virtue of his presiding functions, to the metropolitan falls the responsibility of juridical representation of the entity, in a form analogous to how the diocesan bishop represents the diocese, for patrimonial purposes and the other juridical purposes (as would be, for example, signing the decree to which canon 952 § 1 refers) with the freedom that the decisions be adopted collegially by all the bishops of the *conventus episcoporum*.

433 **§ 1. Si utilitas id suadeat, praesertim in nationibus ubi numerosiores adsunt Ecclesiae particulares, provinciae ecclesiasticae vicinores, proponente Episcoporum conferentia, a Sancta Sede in regiones ecclesiasticas coniungi possunt.**

§ 2. Regio ecclesiastica in personam iuridicam erigi potest.

§ 1. If it seems advantageous, especially in countries where there are very many particular churches, the Holy See can, on the proposal of the Bishops' Conference, join together neighbouring provinces into ecclesiastical regions.

§ 2. An ecclesiastical region can be constituted a juridical person.

SOURCES: § 1: c. 215 § 1; *SCCong* Decr. *Conciliorum provincialium*, 15 feb. 1919 (*AAS* 11 [1919] 72–74); *SCCong* Litt. circ., 22 mar. 1919 (*AAS* 11 [1919] 175–177); *CD* 40, 3; 41; *ES* I, 42
§ 2: c. 100; *ES* I, 42

CROSS REFERENCES: c. 434

COMMENTARY

Juan Ignacio Arrieta

1. The legal concept of ecclesiastical region stated in § 1 of this canon responds to the general evolution of the figure (cf. introduction to title II). The fundamental features of the region can therefore be established in the following way:

a) The ecclesiastical region is a new territorial demarcation that originates from the grouping of several neighboring ecclesiastical provinces. The concept should be taken, nevertheless, with flexibility and in functional relationship to pastoral utility. Thus, in the only country where ecclesiastical regions have been formally constituted, Italy, some ecclesiastical regions effectively group different provinces, while others originate from the grouping of one province alone with several dioceses *immediatamente soggette.* Some ecclesiastical provinces (that were not necessary to unite into a superior unit) are even considered by themselves ecclesiastical regions. It is not necessary, therefore, to unite all the ecclesiastical provinces of a country by regions.

b) The ecclesiastical region is a *non-essential* figure in the Church, but an instrumental one, which can be created when so counseled by rea-

sons of pastoral utility (*si utilitas id suadeat*). Canon 433 mentions only one of those possible reasons, a high number of ecclesiastical circumscriptions in the same country, but other reasons also could justify an analogous organizational solution.

If one pays attention to the experience of recent years, and especially to the paradigmatic case of Italy, one can state that more crucial than a large number of particular churches, organization into regions becomes necessary when the dioceses and, consequently, the ecclesiastical provinces that group them together, turn out not to be appropriate to the geographic range, and to the needs that are set out within it, so that it is pastorally necessary to circumscribe them to obtain certain required pastoral results. At the bottom of this are the same rules of subsidarity that suggest the creation of regions when the lesser instances show themselves to be insufficient to reach the pastoral objective that they have been assigned.

On the other hand, division into ecclesiastical regions can sometimes offer certain advantages in the relations of the ecclesiastical hierarchy with the civil authorities of decentralized countries by permitting the establishment of instances of collaboration among them.

c) In conformity with the *CIC*, national bishops' conferences have the right to propose to the Holy See the grouping of ecclesiastical provinces into regions, something that some Conferences have included in their own statutes.[1]

The Holy See has the task of constituting ecclesiastical regions, and consequently the final assessment of the reasons of utility required in canon 433 § 1. According to their proper limits, the subject matter is left to the competence of the Congregation for Bishops (*PB* 75, 82), and the Congregation *de Propaganda fide* (*PB* 89), following for their establishment a procedure analogous to that described for the creation of ecclesiastical circumscriptions (cf. commentary on c. 373).

d) A formally constituted ecclesiastical region does not obtain *ipso iure* canonical juridical personality, for which a later act by the Holy See is required that—*Motu proprio* or on the petition of the bishops' conference—grants this kind of juridical subjectivity. Nevertheless, it can be noted that juridical personality is an instrument furnished to the pastoral objectives that make the region an operative institution, with specific functions, different from those that can be realize through simply coordinating meetings among bishops (cf. commentary on c. 434).

2. Considering the application that has been made of the concept of ecclesiastical region in these years, it becomes particularly necessary to distinguish between the formally established ecclesiastical regions as

1. Cf. *Estatutos de la Conferencia Episcopal Argentina*, art. 60; *Statut der Deutschen Bischofskomferenz*, art. 45.

such by the Apostolic See, and pastoral zones, pastoral regions, etc., that originate from a division of national territory adopted by some bishops' conferences. Analogously, one must distinguish also between the *conventus episcoporum* that are at the head of a formally established region, and the *conventus episcoporum,* or meetings of bishops that some bishops' conferences have established in different zones of the same country, for internal organizational purposes of the national Conference, and to better reach the ends that are entrusted to it.

a) As has already been said, Italy is the only country in which the organization of the Church has been formally structured into sixteen pastoral regions constituted from 1919. Already before this date, in 1889, with the goal of fostering "relations among bishops," the Holy See divided the Italian territory into seventeen regions (in later years the number was modified), so that each one of them would lead to a bishops' conference,[2] as it was called at that time. Years afterwards, in 1919,[3] after the promulgation of the *CIC*/1917, formal constitution of the ecclesiastical regions got under way. An analysis of the constitutive documents of such regions indicates that the motive for their constitution—a motive that, in practice, would add more to that which in 1899 had given rise to the regional bishops' conferences—was especially the need to allow for the efficacious celebration of provincial councils, which canon 283 of the *CIC*/1917 ordered to be held every twenty years. The limited utility of holding those council meetings in too small a territory (due to the excessive fragmentation of dioceses and of other ecclesiastical circumscriptions) was particularly felt in the territories of the former pontifical states and in the states of the kingdom of the two Sicilies. At the same time there was established in the range of these regions the duty to observe the provisions of canon 292 of the *CIC*/1917, that the *conferenza episcopale regionale* (already established in Italy as we said since 1889) were to foster pastoral cooperation among the episcopate of the different zones of the country, but whose principal juridical task consisted then in the preparation of the regional councils. At the same time, a particular judicial organization of the Church in Italy began to be configured that contemplated this organization into regions.[4]

b) Different from the formally constituted ecclesiastical regions is a phenomenon that has been totally accepted in certain countries by the

2. Cf. S. Congr. Episcoporum et Regularium, Instr. *Alcuni Arcivescovi*, August 24, 1889, in *Leonis XIII Pontificis Maximi Acta*, IX, reprinted (Graz 1971), pp. 184–190.

3. Cf. *SCCong*, Decr. *Conciliorum provincialium*, February 15, 1919, in *AAS* 11 (1919), pp. 72–74; Idem, Lettera circolare, *Con circolar*, March 22, 1919, *AAS* 11 (1919), pp. 175–177; M. COSTALUNGA, "L'organizzazione in provincie e regioni ecclesiastiche," in *Ius Canonicum* 22 (1982), p. 758; G. FELICIANI, *art.* "Circoscrizioni ecclesiastiche," in *Enciclopedia Giuridica*, VI (Rome 1988).

4. Cf. PIUS XI, mp *Qua cura*, December 31, 1938, in *AAS* 30 (1938), p. 412.

statutes of the respective bishops' conferences.[5] Certain bishops' conferences have proceeded to divide the national territory into pastoral zones or regions as a method of better coordinating the Conference itself,[6] which more than new territorial demarcations constitute in reality conferences or meetings of bishops for zones delimited in the same country, although they could very well be considered as the first step for the successive constitution of true ecclesiastical regions. The respective *coetus* or meeting of bishops arises then as decentralized instances of the national Conference itself, that is, as institutions organically tied to the Conference itself.

The manner in which this category has been applied is not the same in all cases. Thus, in the statutes of the Brazilian Bishops' Conference, it is said that the national Conference acts in the regions established by the plenary assembly through the "regional episcopal commissions," whose task, among others, consists in promoting common pastoral activity in the region and in resolving and executing in that territory all that the national Conference or the Holy See might determine.[7] It is recognized in this way that those conferences are really regional organizations of the national Conference. In other words, in the statutes of the Conference of Catholic Bishops of India, the existence of *regional councils* is established according to the regions established by the Conference, in which the bishops of Malabar or Malancar rite participate also.[8] In Mexico, article 5 of the statutes of the national Conference envisions the integration of the members of the Conference in pastoral regions also;[9] and likewise in the United States the administrative committee of the bishops' conference has delimited the country into thirteen regions that in turn determine a regional committee of bishops.[10] The statutes of the French Conference, in contrast, seem to look at a territorial organization, providing that the dioceses be grouped into apostolic regions—delimited by the national bishops' conference—which are the habitual collaborating instances of the bishops among themselves, place of participation, and for exercising co-responsibility in the Church, and an intermediary structure between the dioceses and the national bishops' conference.[11]

For the other aspects of all these meetings of bishops, see commentary on canon 434.

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5. Cf. M. COSTALUNGA, "L'organizzazione in provincie...," cit., pp. 758–759.
6. Cf. *Estatuto da Conferência Nacional dos Bispos do Brasil*, art. 17; *Statuts de la Conference Épiscopale Française*, art. 35.
7. Cf. *Estatuto da Conferência Nacional dos Bispos do Brasil*, arts. 17–18.
8. Cf. *Statutes of the Catholic Bishops' Conference of India*, art. 59, *Appendix* V.
9. Cf. *Estatutos de la Conferencia del Episcopado Mexicano*, art. 5.
10. Cf. National Conference of Catholic Bishops of the United States, *Act Bylaws*, ch. VI; J.L. GUTIÉRREZ, "I raggruppamenti di Chiese particolari," *Monitor ecclesiasticus* 116 (1991), pp. 437–455.
11. Cf. *Statuts de la Conference Épiscopale Française*, arts. 35–37.

434 Ad conventum Episcoporum regionis ecclesiasticae pertinet cooperationem et actionem pastoralem communem in regione fovere quae tamen in canonibus huius Codicis conferentiae Episcoporum tribuuntur potestates, eidem conventui non competunt, nisi quaedam specialiter a Sancta Sede ei concessa fuerint.

It is for a meeting of the bishops of an ecclesiastical region to foster cooperation and common pastoral action in the region. However, the powers given to Bishops' Conferences in the canons of this Code do not belong to such a meeting, unless some of these powers have been specially granted to it by the Holy See.

SOURCES: *SCCong* Litt. circ., 22 mar. 1919 (*AAS* 11 [1919] 175–177); SCCouncil Decr. Il Codice, 21 iun. 1932 (*AAS* 24 [1932] 242–243); *CD* 41; *ES* I, 42

CROSS REFERENCES: cc. 119, 433, 1279

COMMENTARY

Juan Ignacio Arrieta

It is necessary to distinguish two kinds of *conventus episcoporum* (cf. commentary on c. 433). The first kind of *conventus* is an ecclesiastical region formally constituted by the Holy See, and is made up of all the bishops of the circumscriptions grouped into a region. The second kind of *conventus* would be the meeting of bishops constituted by the bishops' conference with its members belonging to a certain area of the country. Even though both kinds of *conventus episcoporum* carry out analogous functions of pastoral functions, let us take a look at some of the organizational questions that each one of them presents.

1. Organization into ecclesiastical regions does not destroy but preserves the ecclesiastical organization of provinces, and consequently maintains the functions of the metropolitan and his jurisdiction over the suffragan dioceses. The creation of a region leads to the configuration of a collective authority in charge of a new territorial demarcation, the *conventus episcoporum*, but, in contrast, it lacks at that regional level a personal office analogous to the metropolitan,[1] who could hypothetically assume functions with respect to the entire region that correspond to the

1. Cf. C. CARDIA, *Il governo della Chiesa* (Bologna 1984), p. 166.

metropolitan pursuant to law. Thus it can be said that, upon the constitution of these ecclesiastical regions, this figure assumes the function of pastoral coordination especially according to the pastoral objectives that have motivated it, while the other functions to maintain the ecclesiastical regimen of governance remaining at the ecclesiastical province level.

Canon 434 states that the competences of the national bishops' conference compiled in the *CIC* do not correspond to the *conventus episcoporum* of the regions except when the Holy See expressly attributes some of those competences to said *conventus*. This does not imply, in any case, that such *conventus episcoporum* cannot exercise power of governance if the Holy See considers it opportune.

Being a collegial body, besides having to adopt its decisions in accordance with canon 119, the *conventus episcoporum* should establish in its own statutes which will be its internal body: president, vice president, etc. This presents questions of *relationship* between the presidency over the region (normally elective) and those metropolitans of the ecclesiastical provinces included in it, especially if the boundaries of the region coincide with those of one ecclesiastical province alone. The statutes of the region should therefore endeavor to facilitate the relationships among all of them, taking the metropolitans into special consideration. A response of the PCILT applicable to our case excluded the auxiliary bishops from the passive right of election to the office of president or vice president of the *conventus episcoporum regional.*[2]

The governance of the regions by the regional *conventus* adopts new perspectives if the ecclesiastical region is granted juridical personality pursuant to canon 433 § 2, by acquiring, among other things, a patrimonial title. In such cases, the administration of assets of the juridical person (c. 1279), as well as the juridical representation of the region in all its breadth, falls in principle to the president of the *conventus episcoporum*.

Keep in mind that, although the region might not have a juridical personality, the Congregation for bishops could grant—and in fact does grant—permission so that the interested diocesan bishops jointly establish at the regional level (by a decree signed by all of them) the canonical entity that could be important to them—a foundation, a seminary, etc.—and establish by common agreement a regimen for their governance.

Another issue that the *conventus episcoporum* of the ecclesiastical region presents is that of its relationship with the national bishops' conference. The *CIC* does not establish any relationship between these figures that were so closely related in the drafts of the revision of the *CIC* (see commentary on the title). Nevertheless, in spite of this silence, the current pastoral practice of governance, as well as the evolution of the role of the bishops' conferences in the different countries, make a real separation be-

2. Cf. PCILT, *Respuesta*, May 23, 1988, in *AAS* 81 (1989), p. 388.

tween the Conference and the regional *conventus* unlikely. In fact, the statutes of the CBI, the only country with formally constituted regions, consider the regional *conventus episcoporum—Conferenze episcopali regionali*, as it calls them—instances organically tied to the bishops' conference The same statutes of the CBI are, moreover, those that establish the organic structure of the regional conferences and that indicate their functions and determine the value of their deliberations.[3]

2. Another kind of *conventus episcoporum* with characteristics in fact analogous to the *conventus* described in canon 434 regarding the ecclesiastical regions in the strict sense, is what, as we have stated, has arisen in some countries through the statutes of the respective bishops' conference.

This *conventus* does not belong to a prior formal constitution of ecclesiastical regions (cf. commentary on c. 433), being only a form of organization of the Conference itself to palliate the complexity of pastoral coordination: pastoral breadth and heterogeneity of the territory; and large numbers of members of the bishops' conference, which makes difficult an efficacious exchange of opinions, etc. These regional commissions or conferences of bishops in a broad sense arise organically linked to the national bishops' conference as decentralized instances of the national Conference, from which they receive their competences and functions.

3. Cf. *Statuto della Conferenza Episcopale Italiana*, arts. 47–55.

CAPUT II
De Metropolitis

CHAPTER II
Metropolitans

435 Provinciae ecclesiasticae praeest Metropolita, qui est Archiepiscopus dioecesis cui praeficitur; quod officium cum sede episcopali, a Romano Pontifice determinata aut probata, coniunctum est.

An ecclesiastical province is presided over by a Metropolitan, who is Archbishop in his own diocese. The office of Metropolitan is linked to an episcopal see, determined or approved by the Roman Pontiff.

SOURCES: c. 272

CROSS REFERENCES: cc. 377 § 3, 395 § 4, 431–432, 442, 1419 § 2, 1438

COMMENTARY

Peter Erdö

1. "The metropolitan is the bishop who presides over the ecclesiastical province and has other bishops under his authority, called 'suffragans," for the suffrage or vote to which they have a right in the provincial council."[1] All metropolitans have the title of archbishop as well, but the Holy See can confer this name, with honorific value, also upon other bishops, both "ad personam" and "ad sedem."

2. a) Already by the Council of Nicea (c. 4)[2] the "*metropolitanus episcopus*," bishop of the "mother city" of the province, appears as the

1. L. CHIAPPETTA, *Il Codice di diritto canonico. Commento giuridico-pastorale*, I (Naples 1988), p. 520, no. 1937.
2. Cf. D. 64, c. 1.

holder of special competences.[3] The name "*archiepiscopus*" has been used since the sixth century.[4] The provincial system gradually spread throughout the Church. The role of the metropolitan was established first in the East, with a special development in Egypt, and later in the West. In Africa the principal bishops of supra-diocesan ecclesiastical circumscriptions were not called metropolitans but primates.[5] In the regions neighboring the Danube, especially in "Noricum" and in "Pannonia," the ecclesiastical "metropolis" could not be established before the barbarian occupation of these provinces.[6]

b) The juridical condition of the metropolitan, practically from the beginning, was characterized by the fact that, even without being in every aspect the superior of the provincial bishops, he had some special rights, as for example, the confirmation of the election of new bishops, pastoral visitation, and a certain vigilance over the province, the convocation of the provincial council and its presidency.[7]

c) In the High Middle Ages, especially in the kingdom of the Franks, the provincial organization came apart and was not renewed until the period that began with St. Boniface and ended with the reign of Charlemagne.[8] Later, in different regions, the competences of the metropolitan increased, to be realigned by Pseudo-Isidore, by classical canon law, and by the Council of Trent.[9]

d) Vatican Council II (*CD* 40) emphasized the role of the metropolitans and expressed the desire for a new definition of their rights and privileges. The Council also demanded that the dioceses immediately subject to the Holy See "be subject to the metropolitan right of the Archbishop" (*CD* 40, 2).

3. a) The metropolitan *presides over the ecclesiastical province.* This presidency has genuine juridical content. In effect, although the metropolitan does not have the function of coordinating the pastoral activity of the province, which corresponds especially to the provincial council (*CD* 39),[10] he has a certain power of governance over the province

3. Cf. J. GAUDEMET, "L'Église dans l'Empire Romain (IVème-Vème siècles)," in *Histoire du Droit et des Institutions de l'Église en Occident*, III (Paris 1958), pp. 380–381.
4. Ibid., p. 381; H. E. FEINE, *Kirchliche Rechtsgeschichte. Die katholische Kirche*, 5th ed. (Cologne-Vienna 1972), pp. 118–120.
5. Cf. J. GAUDEMET, "L'Église...," cit., p. 383.
6. Ibid., p. 387.
7. Cf. H. E. FEINE, *Kirchliche Rechtsgeschichte...*, cit., p. 119.
8. Cf. P. HINSCHIUS, *System des katholischen Kirchenrechts mit besonderer Rücksicht auf Deutschland*, II, Berlin 1878 (Graz 1959), pp. 7–9; E. Lesne, *La hiérarchie épiscopale. Provinces, metropolitaines, primats en Gaule et Germanie depuis la réforme de Saint Boniface jusqu'à la mort d'Hincmar, 742–882* (Lille-Paris 1905).
9. Cf. P. HINSCHIUS, *System...*, cit., pp. 9–23; A. MARCHETTO, *Episcopato e primato pontificio nelle decretali Pseudo-Isidoriane* (Rome 1971), pp. 57–109.
10. Cf. *Comm.* 14 (1982), p. 190.

(c. 432 § 1). His rights over the whole of the province (formerly "*in suffraganeos*," or "*quae spectant ad comunem statum provinciae*") were distinguished from his competences over each one of the suffragan dioceses (formerly "*in subditos suffraganeorum*"; cf. commentary on c. 436).

Also regarding the whole of the province, the power of governance of the metropolitan is limited to that which is attributed to him by law. The general presumption (c. 381 § 1) is in favor of the competence of each one of the diocesan bishops. In the provinces "each one of the dioceses preserves its own autonomy, with the exception of those rights reserved to the Metropolitan (c. 436) or to the particular council (c. 445)."[11]

b) The metropolitan exercises power of governance over a province in the following cases:

— in the provincial council (c. 442);

— as the judge and superior of his metropolitan tribunal (c. 1438; cf. c. 1419 § 2). This judicial activity (in contrast to what occurred in canon 274, 7° of the*CIC*/1917is not mentioned in canon 436 among the rights of the metropolitan in the suffragans dioceses. In effect, the Commission for the Revision of the Code did not want to include it among these rights.[12] In reality, to revise the judgments (of the tribunal) of the bishop and to judge the cases of the juridical persons represented by the bishop, does not belong to the functions strictly subject, by their nature, to the diocesan bishop.

Other rights and duties of the metropolitan with respect to the province are the following:

— to inform the Holy See of an absence by a bishop (c. 395 § 4);

— to be consulted for the appointment of diocesan or coadjutor bishops (c. 377 § 3);

— to be consulted before the dissolution of the presbyteral council (c. 501 § 3);

— to keep current of the possible candidates for bishops (c. 413 § 1);

— appeal to the Holy See when, by virtue of an ecclesiastical penalty, a diocesan bishop is prohibited from exercising his functions (c. 415);

— to receive from the bishops the texts of the declaration and decrees of the provincial diocesan synods (c. 467);

— to represent the province, which has juridical personality "ipso iure" (c. 432 § 2). In effect, pursuant to canon 118, the juridical persons are represented by those to whom that competency is granted by the law or

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11. G. DAMIZIA, *ad. c. 432*, in P. V. PINTO (ed.), *Commento al Codice di diritto canonico* (Rome 1985), p. 254.
12. Cf. *Comm.* 14 (1982), p. 190.

the statutes. The fact of presiding over the province, established by this canon, carries with it the juridical grant of competence to represent it.[13]

4. The nature of the special power of the metropolitan is determined by the theological fact that the bishops heading the particular churches "exercise their pastoral office over the portion of the people of God assigned to them, not over other churches nor the Church universal. But in so far as they are members of the Episcopal College and legitimate successors of the apostles ... each is bound to have such care and solicitude for the whole Church which, though it be not exercised by any act of jurisdiction, does for all that redound in an eminent degree to the advantage of the universal Church" (*LG* 23). Therefore, the power exercised by a bishop over dioceses not his own comes from the concession of approval of the supreme authority of the Church (Roman Pontiff/Episcopal College).[14] Given that, pursuant to this canon, the post of metropolitan is an ecclesiastical *office*, his power is "ordinary" (c. 131 § 1) and "vicarious" (c. 131 § 2).

5. The office of the metropolitan is not elective or variable, but is united to the episcopal see *determined or approved by the Roman Pontiff*. The metropolitan diocese is always called an archdiocese. Other archdioceses also exist exceptionally:[15] those of the bishops who are not metropolitans that use the title of archbishop conferred "*ad sedem.*"

13. Cf. L. CHIAPPETTA, *Il Codice...*, cit., I, p. 518, no. 1929.
14. Cf. W. ONCLIN, "The Power of Decision in the Church at the supra-diocesan Level," in *Comm.* 2 (1970), p. 212; A. GIACOBBI, "Strutture di comunione tra le Chiese particolari," in *Il diritto nel mistero della Chiesa*, II (Rome 1990), pp. 532–533.
15. Cf. *Comm.* 14 (1982), p. 189; J. M. PIÑERO CARRIÓN, *La ley de la Iglesia. Instituciones canónicas*, I (Madrid 1985), p. 468.

436 **§ 1. In dioecesibus suffraganeis Metropolitae competit:**

1° vigilare ut fides et disciplina ecclesiastica accurate serventur, et de abusibus, si qui habeantur, Romanum Pontificem certiorem facere;

2° canonicam visitationem peragere, causa prius ab Apostolica Sede probata, si eam suffraganeus neglexerit;

3° deputare Administratorem dioecesanum, ad normam cann. 421 § 2 et 425 § 3.

§ 2. Ubi adiuncta id postulent, Metropolita ab Apostolica Sede instrui potest peculiaribus muneribus et potestate in iure particulari determinandis.

§ 3. Nulla alia in dioecesibus suffraganeis competit Metropolitis potestas regiminis; potest vero in omnibus ecclesiis, Episcopo dioecesano praemonito, si ecclesia sit cathedralis, sacras exercere functiones, uti Episcopus in propria dioecesi.

§ 1. Within the suffragan dioceses, the Metropolitan is competent:

1° to see that faith and ecclesiastical discipline are carefully observed and to notify the Roman Pontiff if there be any abuses;

2° for a reason approved beforehand by the Apostolic See, to conduct a canonical visitation if the suffragan bishop has neglected it;

3° to appoint a diocesan Administrator in accordance with cann. 421 § 2 and 425 § 3.

§ 2. Where circumstances require it, the Apostolic See can give the Metropolitan special functions and power, to be determined in particular Law.

§ 3. The Metropolitan has no other power of governance over suffragan dioceses. He can, however, celebrate sacred functions in all Churches as if he were a bishop in his own diocese, provided, if it is the cathedral Church, the diocesan bishop has been previously notified.

SOURCES: § 1,1°: c. 274,4°
§ 1,2°: c. 274,5°
§ 1,3°: cc. 274,3°, 432 § 2
§ 2: *CD* 40, 1
§ 3: c. 274,6°; CodCom Resp. I, 5 aug. 1941 (*AAS* 33 [1941] 378)

CROSS REFERENCES: cc. 396–398, 413 § 1, 415, 421 § 2, 425 § 3, 432 § 1, 467, 501 § 3

COMMENTARY

Peter Erdö

1. In suffragan dioceses, due to the theological nature of the power of the diocesan bishops (*LG* 27; *CD* 8, 1), the metropolitan does not have power of governance, except in the exceptional cases specified by the law. There exists a former presumption according to which metropolitans do not have jurisdiction over the "subjects" of their suffragans except for the cases especially established by law (*X* I, 31, 11). The same principle is recognized in § 3 of this canon in a more accentuated form than that of canon 274 of the *CIC*/1917.

2. Therefore, the list of competences of the metropolitan gathered together in this canon is specific. These competences can be reduced to two: vigilance and the supplementary role.[1]

a) *Vigilance*

The function of vigilance refers to the careful observance of the faith and ecclesiastical discipline (§ 1, 1°). The metropolitan, nevertheless, does not possess the right to correct possible abuses by measures that require power of governance. He is obliged (and not only authorized)[2] to inform the Roman Pontiff of abuses (ibid.). The formula used by the canon ("*competit*") is not a typical expression of a precept of the legislator. He puts the accent on the possibility of the metropolitan, over the power that falls to him in spite of general contrary opinion (§ 3).[3] In effect, it is an obligation because otherwise the provision would be superfluous in the context of the *CIC* (cf. c. 17), given that the right of making known to the sacred pastors their own opinion regarding what concerns the good of the Church is incumbent upon all the faithful (c. 212 § 3). A notable part of canonical tradition (cf. c. 6 § 2) already considered the corresponding passage of the old Code (c. 274, 4° *CIC*/1917)[4] imperative. Here, it is a

1. Cf. J. I. ARRIETA, commentary on cc. 435–436, in *Pamplona Com.*
2. Cf. L. CHIAPPETTA, *Il Codice di diritto canonico. Commento giuridico-pastorale*, I (Naples 1988), p, 521, no. 1939; G. DAMIZIA, *ad. c. 436*, in P. V. PINTO (ed.), *Commento al Codice di diritto canonico* (Rome 1985), p. 256.
3. Cf. P. ERDÖ, "Expressiones obligationis et exhortationis in Codice Iuris Canonici," in *Periodica* 86 (1987), p. 12; L. WÄCHTER, *Gesetz im kanonischen Recht. Eine rechtssprachliche und systematisch-normative Untersuchung zu Gründproblemen der Erfassung des Gesetzes im katholischen Kirchenrecht* (St. Ottilien 1989), p. 288.
4. S. SIPOS, *Enchiridion Iuris Canonici* (Rome, 6th ed. 1955), p. 184; H. JONE, *Gesetzbuch des kanonischen Rechtes*, I, Paderborn 1939, p. 252; K. Mörsdorf, *Lehrbuch des Kirchenrechts auf Grund des Codex Iuris Canonici*, I 11th ed. (Munich-Paderborn-Vienna 1964), p. 383.

question of a right that also constitutes an obligation.[5] The function of vigilance does not constitute for the metropolitan a right to conduct a canonical visitation of the provincial dioceses on his own initiative.

b) *The supplementary role*

The metropolitan can make a *pastoral visit* in a suffragan diocese only when the competent bishop neglects this duty (cf. cc. 396–398). That supplementary function can be effectuated if he has the prior approval of the Holy See (§ 2, 2°).

Another supplementary function corresponds to the metropolitan when *the election of the diocesan administrator* of a suffragan diocese is not carried out, for whatever reason, or is not valid (for lack of freedom: c. 170; for the electors not having been summoned: c. 166 § 3; etc.) in the prescribed time (c. 421 § 2); or if it is effected without observing the conditions relative to the suitability of the candidate that are prescribed "*ad validitatem*" (c. 425 §§ 1 and 3). In this case, the metropolitan can and should (see above; cf. c. 425 § 3: "deputet") appoint the diocesan administrator.

3. The metropolitan can be endowed by the Holy See with *special tasks and power*, which should be determined by the particular law (but given by the Holy See itself). Such a concession is made for provinces when circumstances require it (§ 2). The reason for the provisions consists in the pastoral situation of some great metropolis (modern *megalopolis*), which was not only divided into districts, but also into suffragan dioceses (for example, Paris). In this case, since they are genuine sociological units, it is opportune to preserve the pastoral unity of such dioceses by using a new juridical formula that guarantees special faculties to the metropolitan.[6]

4. *The honorific rights* of the metropolitan are especially liturgical. He may celebrate sacred functions (even with pontifical insignias) in all the churches of the suffragan dioceses as a bishop in his own diocese (§ 3; cf. c. 390). He needs no permission of the local bishop, but when he celebrates in a cathedral he should give prior warning to the diocesan bishop. Nevertheless, the law requires the permission of the diocesan bishop when in the context of the liturgy certain sacraments are administered (confirmation: c. 886 § 2; holy orders cc. 1013, 1015 § 1, 1017: assistance at a marriage ceremony: c. 1108 § 1). Another honorific right is the use of the pallium (cf. commentary on c. 437).

5. The metropolitan can no longer make up for the negligence of a suffragan bishop regarding the confirmation of an election or regarding the institution of a person presented for certain offices. In such cases,

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5. Cf. H. MARITZ, "Die Kirchenprovinz. Provinzialkonzil und Metropolit," in J. LISTL-H. MÜLLER-H. SCHMITZ (eds.), *Handbuch des katholischen Kirchenrechts* (Regensburg 1983), p. 327.
6. Cf. *Comm.* 18 (1986), pp. 73–74.

those who have presented or elected the candidate can present an appeal against the administrative silence (c. 57 § 2).[7]

6. The metropolitan cannot accept administrative appeals against a decision of the suffragan bishops since he is not a hierarchical superior and does not have more power of governance than that indicated by the law (§ 3).

7. Cf. L. CHIAPPETTA, *Il Codice*..., cit., I, pp. 218–219 and 235, nos. 981, 1053.

437 **§ 1. Metropolita obligatione tenetur, intra tres menses a recepta consecratione episcopali, aut, si iam consecratus fuerit, a provisione canonica, per se aut per procuratorem a Romano Pontifice petendi pallium, quo quidem significatur potestas qua, in communione cum Ecclesia Romana, Metropolita in Propria provincia iure instruitur.**

§ 2. Metropolita, ad normam legum liturgicarum, pallio uti potest intra quamlibet ecclesiam provinciae ecclesiasticae cui praeest, minime vero extra eandem, ne accedente quidem Episcopi dioecesani assensu.

§ 3. Metropolita, si ad aliam sedem metropolitanam transferatur, novo indiget pallio.

§ 1. The Metropolitan is obliged to request the pallium from the Roman Pontiff, either personally or by proxy, within three months of his episcopal ordination or, if he has already been consecrated, of his canonical appointment. The pallium signifies the power which, in communion with the Roman Church, the Metropolitan possesses by law in his own province.

§ 2. The Metropolitan can wear the pallium, in accordance with the liturgical laws, in any Church of the ecclesiastical province over which he presides, but not outside the province, not even with the assent of the diocesan bishop.

§ 3. If the Metropolitan is transferred to another metropolitan see, he requires a new pallium.

SOURCES: § 1: c. 275; Paulus PP. VI, mp *Inter eximia,* 11 maii 1978 (*AAS* 70 [1978] 441–442)
§ 2: c. 277
§ 3: c. 278

CROSS REFERENCES: c. 355 § 2

COMMENTARY

Peter Erdö

1. In its present form, the pallium is a small stole of white wool, adorned by six crosses and with a black fringe"[1] (*Caeremoniale Episco-*

1. Cf. L. CHIAPPETTA, *Il Codice di diritto canonico. Commento giuridico-pastorale,* I (Naples 1988), p, 523, no. 1944.

porum, no. 1154). The palliums, before being delivered, are preserved in the "*Confessio Petri.*" Therefore they are considered relics in the broad sense.[2]

2. Around the year 500 the first documents of practice appeared, pursuant to which the pope bestowed the pallium upon certain eminent bishops.[3] In classical canon law a rich casuistic law was worked out regarding the juridical consequences of the omission to request the pallium from the Roman Pontiff within the prescribed time (three months), since the pallium is the symbol of the power and dependency of the archbishop (D. 100, cc. 1–2; *X* I, 6, 4; I, 8, 3).[4]

3. The metropolitan is obliged to request, personally or though a proxy, the pallium from the Roman Pontiff. The petition should be made within the three months following his episcopal ordination or, if the new metropolitan is already a bishop, upon his appointment to the metropolitan see. The reason for these obligations is the meaning of the pallium: it is the sign of the hierarchical power that the metropolitan possesses in his province, in communion with the Church in Rome (§ 1).

4. Because of that meaning, following the idea of Vatican Council II (cf. *CD* 40), a *Motu proprio* of Paul VI established that in the Latin Church "the holy pallium must be conferred only on the Metropolitans and the Patriarch of Jerusalem of Latin rite, all the privileges and customs of those who presently have it, being abrogated by singular concession, both for the particular Churches and bishops."[5] According to this document, in the Latin Church, the pallium can be used:

— by metropolitans;

— by the Latin Patriarch of Jerusalem;

— by the archbishops and bishops who on May 11, 1978 had being accorded the privilege of the pallium: they can continue using it as long as they continue being pastors of the churches that are entrusted to them at the time of the promulgation of the cited *Motu proprio*;

— if the Supreme Pontiff elect is still not a bishop, at his ordination, the dean of the Sacred College or the cardinal to whom corresponds the rite of ordination has the right to use the pallium (cf. *UDG* 90).

2. Cf. M. MORGANTE, art. "Pallium" in P. Palazzini (ed.), *Dictionarium morale et canonicum*, III (Rome 1966), pp. 568–569; R. NAZ, "Pallium," in *Dictionnaire de Droit Canonique*, VI, cols. 1192–1194.

3. Cf. T. KLAUSER, "Pallium," in LThK VIII, cols. 7–9; J. GAUDEMET, "Le gouvernement de l'Église à l'époque classique. II. Le gouvernement local," in *Histoire du Droit et des Institutions de l'Église en Occident*, VIII/2 (Paris 1979), pp. 30–31.

4. Cf. J. GAUDEMET, "Le gouvernement...," cit., p. 31.

5. PAUL VI. mp *Inter eximia*, May 11, 1978, in *AAS* 70 (1978), pp. 441–442. Cf. the commentary by P. TOCANEL, in *Apollinaris* 51 (1978), pp. 346–359.

5. The metropolitan can use the pallium in all the churches in his province, but he cannot use it outside his province, not even with the consent of the local bishop (§ 2). Special legislation can permit certain holders of the pallium to use it also outside of their provinces. That faculty is attributed to the Latin Patriarch of Jerusalem and to the patriarch of Lisbon, who may use the pallium throughout Portugal.[6]

6. The use of the pallium is governed by the liturgical norms (§ 2). Pursuant to the *Pontificale Romanum* (title *De pallio*), the pallium can be used only for Mass (and not for other celebrations), and only on certain indicated days (feasts, occasions). Only the pope can use the pallium at every Mass.[7]

7. If the metropolitan is transferred to another metropolitan see, he must request another pallium (§ 3).

8. Failing to request the pallium is not currently sanctioned by an impediment to exercise his office.[8] Pursuant to canon 276 of the*CIC*/1917, both the exercise of metropolitan power and the celebrations for which the pallium was prescribed were unlawfully carried out before the imposition of the pallium. This prohibition has been suppressed because it is not the pallium that confers power on the metropolitan and because it is possible that the office must be exercised before the pallium has been delivered, which normally takes place in the context of a public consistory.[9]

9. The Roman Pontiff is the person who grants the pallium. The imposition of this distinction on the metropolitans or its handing over to their proxies falls to the senior cardinal deacon (c. 355 § 2).

6. Ap. Const. *In Supremo Apostolatus*, November 7, 1716, no. 25. Cf. *Comm.* 14 (1982), p. 190; J. M. PIÑERO CARRIÓN, *La ley de la Iglesia. Instituciones canónicas*, I (Madrid 1985), p. 469.

7. Cf. H. MARITZ, "Die Kirchenprovinz. Provinzialkonzil und Metropolit," in J. LISTL-H. MÜLLER-H. SCHMITZ (eds.), *Handbuch des katholischen Kirchenrechts* (Regensburg 1983), p. 328.

8. For the opposing view, cf. A. GIACOBBI, "Strutture di comunione tra le Chiese particolari," in *Il diritto nel mistero della Chiesa*, II (Rome 1990), p. 538.

9. Cf. J. I. ARRIETA, commentary on c. 437, in *Pamplona Com*; G. STOFFEL, in K. LÜDICKE (ed.), *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1985ff), 353/2, no. 3.

438 Patriarchae et Primatis titulus, praeter praerogativam honoris, nullam in Ecclesia latina secumfert regiminis potestatem, nisi de aliquibus ex privilegio apostolico aut probata consuetudine aliud constet.

The title of Patriarch or Primate, apart from conferring a prerogative of honour, does not in the latin Church carry with it any power of governance, except in certain instances where an apostolic privilege or approved custom establishes otherwise.

SOURCES: c. 271

CROSS REFERENCES: cc. 23–28, 76–84, 350 §§ 1 et 3, 1558 § 2

COMMENTARY

Peter Erdö

1. The *patriarch* and the *primate*, in the universal law of the Latin Church, *are not ecclesiastical offices*, but only titles that carry an honorific prerogative without any power of governance.

In the common law of the Eastern churches, in contrast, the patriarch and the major archbishop are genuine offices with powers of jurisdiction (cf. *CCEO* cc. 55–150; 151–154; especially c. 56). In effect, Vatican Council II establishes "by the term 'Eastern patriarch' is meant the bishop who has jurisdiction over all the bishops, metropolitans not excepted, clergy and people of his own territory or rite, according to the rules of canon law and without prejudice to the primacy of the Roman Pontiff" (*OE* 7).

2) The primacies in the Latin Church were not constituted in all regions. Despite the former use (African) of the name of *primate*, the institution as an ecclesiastical office of universal law stably united with an episcopal see and superior to the metropolitan, was a Pseudo-Isidorian idea.[1] According to this theory, the primate was of the same hierarchical degree as the patriarch (cf. D. 99, c. 1). He had a forum of appeal for the

1. Cf. H. FUHRMANN, *Studien zur Geschichte mittelalterlicher Patriarchate*, in ZRG kan. Abt. 39 (1953), pp. 112–176; 40 (1954), pp. 1–84 (above all, pp. 14–35); 41 (1955), pp. 95–183; idem, *Einfluss und Verbreitung der pseudoisidorischen Fälschungen*, I (Stuttgart 1972), pp. 48–49; J. GAUDEMET, "Le gouvernement de l'Église à l'époque classique. II. Le gouvernement local," in *Histoire du Droit et des Institutions de l'Église en Occident*, VIII/2 (Paris 1979), p. 34; P. ERDÖ, *L'ufficio del Primate nella canonistica da Graziano ad Uguccione da Pisa* (Rome 1986), pp. 18–19.

judgments of the metropolitan but no immediate jurisdiction over the suffragans, and he could not pass judgment on the person of the bishops without the consent of the pope. This rank corresponded to the bishops of the primary cities, that is, to the metropolitans of the primary province among those that had the same name in the public administration of the Roman Empire. The possibility was recognized of founding new primatial sees on the conditions that there was a "*multitudo*" that needed one (cf. D. 99, c. 2).[2] The Pseudo-Isidorian description of this "office" was contradictory. Later there was an attempt to put this institution into practice. The results were very different according to the places, but the primacy did not ever become a general and uniform office.[3] The first classical commentators on canon law pondered this strange institution. Some tried to identify, from the Pseudo-Isidorian concept, certain typical rights and duties that would pertain to the primates. The theory formulated by Hugotio of Pisa, which influenced the practice and even the present canon, considers as decisive factors for the specification of the competence of the primates the privileges granted to each one of the primatial sees and the customary law. Thus, the nature of the office of the primacy passed to the second plane[4] in the universal law, and was gradually disappearing.[5] It was definitely suppressed in canon 271 of the*CIC*/1917.

Given that the *patriarch* of the West is the Roman Pontiff, the patriarchal institution does not play an important role itself in the Latin Church. The western titular patriarchies are related, either to the influence of the East in the Adriatic coast of northern Italy (Aquileia, Grado, and in a certain sense Venice also), along with the organization of the Latin Church in the Orient in the Middle Ages or in the great geographical discoveries or other circumstances (the patriarchies of the Western and Eastern Indies, Lisbon).[6] Formerly, because of the identification of the rank of the patriarch with that of the primate, some primates were also called patriarchs.[7] The distinction between *major and minor* patriarchs goes back, regarding its subject matter, to the classical period of canon law,[8] which affirmed the difference between the five oldest patriarchies (Rome, Antioch, Alexandria, Constantinople, and Jerusalem) and all the rest. They were called, in effect, minor, both the most recent Eastern patri-

2. Cf. P. ERDÖ, *L'Ufficio...*, cit., pp. 19–23.

3. Cf. J. GAUDEMET, "Le gouvernement...," cit., pp. 34–37; H. FUHRMANN, "Provincia constat duodecim episcopatibus. Zum Patriarchatsplan Erzbischofs Adalberts von Hamburg—Bremen," in *Studia Gratiana* 11 (1967), pp. 389–404.

4. P. ERDÖ, *L'ufficio...*, cit., pp. 85–86; idem, "Cause su diritti dei primati nella pratica di Roffredo da Benevento," in ZRG kan. Abt. 72 (1986), pp. 362–367.

5. Cf. P. HINSCHIUS, *System des katholischen Kirchenrechts mit besonderer Rücksicht auf Deutschland*, I (Berlin 1878; Graz 1959), pp. 623–632.

6. Cf. J. GAUDEMET, "Le gouvernement...," cit., pp. 38–40; P. HINSCHIUS, *System...*, cit., I, pp. 567–576; H. FUHRMANN, "Studien zur Geschichte...," cit.

7. Cf. P. HINSCHIUS, *System...*, cit., I, pp. 572–574; P. ERDÖ, *L'ufficio...*, cit., p. 76.

8. Cf. P. ERDÖ, *L'ufficio...*, cit., pp. 36, 72.

archies and the merely titular Western patriarchies,[9] since the genuine juridical difference occurs between the patriarchies provided with power of governance (the Eastern in general) and the honorific ones (in the Latin Church).[10]

3. *Prerogative of honor* can indicate the honorific right of using the title. Regarding its *precedence*, the*CIC*/1917 in canon 271, still mentioned it, but the current Code no longer speaks of it. This change follows the general line of the new Code, which, by devoting more attention to disciplinary and pastoral subject matter, no longer contains general norms regarding precedence (cf. cc. 106, 280, 347 *CIC*/1917) and only speaks rarely (cc. 351 § 3, 1609 § 3) on this matter. Some commentators affirm that the patriarchs and primates have preserved their precedence.[11] This seems logical if one acknowledges the criterion of respect as the basis of this precedence.[12] Moreover, if by privilege or custom someone has genuine special power, the hierarchical criterion can also assure him precedence. The patriarchies and their office holders are enumerated in the *Annuario Pontifico* in a special chapter, before archdioceses and dioceses, while the primatial character of some metropolitan sees are not indicated. This is in spite of the fact that the *CIC* does not attribute broader rights to the titular patriarchies than to the primatial patriarchies.

The official list of participants published on the occasion of Vatican Council I[13] included the primates in a separate list after the list of cardinals and patriarchs. Pius IX assigned a special position to the primates after the patriarchs and before the archbishops, but affirming that such concession was effective only for that council and did not grant any right to the primates.[14]

The possible *special honorific rights* (for example, the right to wear the purple without being cardinals), although they are not imbued with power of governance, do not descend directly from those titles, but must have a special juridical basis.

4. The archbishop of Eztergom has retained a genuine power of governance (with historical continuity) as Primate of Hungary, which, among

9. Cf. P. HINSCHIUS, *System...*, cit., I, p. 575.
10. Cf. E. EID, *La figure juridique du Patriarche. Étude historico-juridique* (Rome 1962), pp. 163–164, no. 10.
11. Cf. A. GIACOBBI, "Strutture di comunione tra le Chiese particolari," *Il diritto nel mistero della Chiesa*, II (Rome 1990), p. 536.
12. Cf. J. M. PIÑERO CARRIÓN, *La ley de la Iglesia. Instituciones canónicas*, I (Madrid 1985), p. 232.
13. *Catalogus Hierarchicus omnium catholicae Ecclesiae praesulum ius interveniendi in concilio habentium*, in *ASS* 5, p. 537.
14. Ap. Const. *Multiplices inter*, November 27, 1869, no. 4, in *ASS* 5, p. 235.

other attributions, has an ordinary tribunal of third instance.[15] In case a patriarch or primate has by apostolic privilege or by custom a power stably tied to that title, his rank also constitutes an *ecclesiastical office.*

5. The Roman Pontiff is also the patriarch of the West and primate of Italy[16] but, according to the authors,[17] his title of primate is "at least honorific," while the positive content of his patriarchal power already lies in his primacy of jurisdiction.

15. Cf. P. ERDŐ, "Il potere giudiziario del Primate d'Ungheria," in *Apollinaris* 53 (1980), pp. 272–292; 54 (1981), pp. 213–231; A. SZENTIRMAI, "The Primate of Hungary," in *The Jurist* 20 (1961), pp. 27–46; Z. GROCHOLEWSKI, "Linee generali della Segnatura Apostolica relativamente alla procedura nelle cause matrimoniali," in *Monitor Ecclesiasticus* 107 (1982), pp. 250–251.

16. Cf. *Annuario Pontificio* 2003 (Vatican City 2003).

17. Cf. P. HINSCHIUS, *System...*, cit., I, p. 559; F. X. Wernz-P. Vidal-P. Aguirre, *Ius canonicum*, II, 3rd ed. (Rome 1943), p. 497, no. 436; A. GARUTI, *Il Papa Patriarca d'Occidente? Studio storico dottrinale*, Collectio Antoniana 2 (Bologna 1990).

CAPUT III
De Conciliis particularibus

CHAPTER III
Particular Councils

439 **§ 1. Concilium plenarium, pro omnibus scilicet Ecclesiis particularibus eiusdem conferentiae Episcoporum, celebretur quoties id ipsi Episcoporum conferentiae, approbante Apostolica Sede, necessarium aut utile videatur.**

§ 2. Norma in § 1 statuta valet etiam de concilio provinciali celebrando in provincia ecclesiastica, cuius termini cum territorio nationis coincidunt.

§ 1. A plenary council for all the particular Churches of the same Bishops' Conference is to be celebrated as often as the Bishops' Conference, with the approval of the Apostolic See, considers it necessary or advantageous.

§ 2. The norm laid down in § 1 is valid also for a provincial council to be celebrated in an ecclesiastical province whose boundaries coincide with the boundaries of the country.

SOURCES: § 1: c. 281; *CD* 36

CROSS REFERENCES: cc. 337 § 1, 342, 343, 440–446, 447, 455, 466

COMMENTARY

Eloy Tejero

1. *Characteristics of particular councils*

The particular councils or synods of an intermediate range—plenary and provincial—have some of their own characteristics that, for the sake

of clarification, should be explained: in contrast to the ecumenical council, in which "the College of Bishops exercises its power over the universal Church in solemn form" (c. 337 § 1), the particular councils congregate only a part of the episcopal college; but they have genuine power to establish "a common program to be followed in various churches both for teaching the truths of the faith and for regulating ecclesiastical discipline" (*CD* 36).

On account of its synodal character, both the plenary councils and the provincial councils are organs of hierarchical action, thus rendering their decisions binding for the faithful in their respective territorial range. H.J. Sieben has found in the letters of St. Cyprian very expressive formulations of this normative communion, inherent to the conciliar actions of a particular range.[1] Each decision of one of these councils is "*apud omnes unus actus et una consensio secundum Domini praecepta.*"[2] Because the conciliar deliberation is done in communion, the drafting bishops of each canon can say: the canon expresses "*omnium nostrum commune consilium*"[3]; or as well: "*consilio communi tractavimus.*"[4]

But the *communio* of the bishops who participate in particular councils is not limited to common deliberation, formulation of a common consilium, and a common act. "*Concilio frequenter acto non consensione tantum nostra sed et comminatione decrevimus.*"[5] Each conciliar decision of this range forces it to impose on the faithful the observance of what is decided in the council, such that "*servetur ab omnibus una fida consensio.*"[6] By fidelity to the *commune consilium*, to the *consensus* of those who deliberate in a particular council, the faithful walk in a unity of faith, in that *consensus* of fidelity that is the *fida consensio*, and in disciplinary cohesion, consolidated by the provisions established by "*quid fieri oportet,*"[7] "*convenientibus in unum pluribus sacerdotibus cogere et celebrare concilium.*"[8]

From its two basic characteristics—*la consensio plurium sacerdotum y la auctoritas comminandi decreta*—the particular councils are institutions very expressive of the hierarchical communion and of the episcopal collegiality though they bring together only a part of the College

1. Cf. H.J. SIEBEN, "Concilium perfectum: Zur Idee der sogenannten Partikularsynode in der Alten Kirche," in *Theologie und Philosophie* 63 (1988), pp. 214–216.
2. ST. CYPRIAN, Let. XXV, ed. G. HARTEL, in *CSEL*, III, p. 538, 21.
3. Idem, Let. XLIII, 7, in ibid., p. 596, 23.
4. Idem, Let. XXXII, in bid., p. 565, 18.
5. Idem, Let. LVIII, in ibid., p. 680, 10.
6. Idem, Let. XXXII, in ibid., p. 565, 16.
7. Idem, Let. XLIII, in bid., p. 596, 23.
8. Idem, Let. LXXII, 1, in ibid., p. 775, 3.

of Bishops (*LG* 22).[9] Thus, it is important to differentiate the particular councils from other episcopal organizations of a particular range, which do not combine the two basic characteristics of the particular councils: the *communis consensio* and the *communis comminatio per decreta.*

Thus, the bishops' conference, by its nature as an assembly, implies a common deliberation and even a *communis consensus*, which could be contemplated in a certain relation to the particular council. But canon 447 specifies the range proper to the actions that correspond to the bishops' conference: in the conference the gathered bishops exercise "certain pastoral offices," "by forms and means of apostolate suited to the circumstances of time and place." Therefore, the bishops' conference lacks the power to establish "a common program to be followed in various Churches both for teaching the truths of the faith and for regulating ecclesiastical discipline" (*CD* 36). Therefore, the CIC does not attribute to the bishops' conference "power of governance, especially legislative power" that canon 445 grants for particular councils. It is true that canon 455 envisions the possibility that the bishops' conference issue general decrees; but it does it in a way that confirms the difference existing between the particular council and the bishops' conference: the Conference "can make general decrees only in cases where the universal Law has so prescribed, or by special mandate of the Apostolic See."

Likewise it is not proper to establish parity between the synodal character of the particular councils and the diocesan synod. For although there is no doubt of the legislative intention that motivates the diocesan synod (in contrast to the actions proper to the bishops' conference) it cannot be said that the *communis consensio* of the synodal members of diocesan range are a *communis cominatio per decreta.* In this sense, canon 466 is very clear: "The diocesan bishop is the sole legislator in the diocesan synod. Other members of the synod have only a consultative vote." Similarly, regarding the Synod of Bishops, it can be said that its end is to "assist the Roman Pontiff in the defense and development of faith and morals and in the preservation and strengthening of ecclesiastical discipline" (c. 342). This *communio consilii*, in the matters dealt with by the Synod of Bishops, consists in "setting forth recommendations. It is not its function to settle matters or to draw up decrees" (c. 343).

By the particular council's maintaining its specific nature as *communis consensio sacerdotum* and *communis comminatio per decreta* in the regulation done by the CIC, we also observe in it a will—already expressed by Vatican II (*CD* 36)—that "these admirable institutions—synods and councils—may flourish with renewed vigor so that the growth of reli-

9. Cf. J.H. PROVOST, "Particular Councils," in *Le nouveau Code de Droit canonique. The New Code of Canon Law. Actes du Ve Congrès international de Droit Canonique* (Ottawa 1986), pp. 542–545.

gion and the maintenance of discipline in the various churches may increasingly be more effectively provided for in accordance with the needs of the times."

2. *Delimitation of and determination to hold a plenary council*

As J. Orlandis has noted,[10] the particular councils have had very different natures: they have adopted synodal forms of an uncertain canonical profile and have been very much determined by more diverse historical circumstances. This fluidity of criteria applied to the celebration of the particular councils is accented more still in the plenary councils, whose profile is the most ambiguous throughout history. Therefore, to understand appropriately the ecclesial significance of the innovations introduced by the CIC, the criteria following historically in the delimitation of the operative range proper to the plenary council must be stated.

The information that we have regarding the councils celebrated before the Constantine epoch[11] allows us to affirm that the initiative for celebrating the conciliar meetings corresponded to the communities of an apostolic origin—Rome, Antioch, Alexandria, Ephesus—whose range of influence proper was projected over more or less defined territories, as the patriarchies and the primatial districts, in a certain parallelism with the diocese in the primitive sense of the term.

With the conversion of Constantine, we see the first manifestations of the incidence of political power in the celebration of the general councils—Arles in 314, Sardica in 343, Seleucia in 359, and Rimini in 360—thus termed because they gathered together the bishops of the Eastern and Western Empires. Understanding the implications of the invasion of the Germanic peoples and consequent paralyzing of the councils for a century leads to the recognition that only under the protection of the Catholic monarchs was the celebration of the national synods possible in the kingdoms of the Franks, Visigoths, Lombards, or Normans. Once the medieval empires were established, their participation in the particular councils

10. Cf. J. ORLANDIS, "Funzione storica e ecclesiologica dei concili particolari," in M. GHISALBERTI-G. MORI, *La sinodalità nell'ordinamento canonico* (Padova 1991), pp. 147–149.

11. Cf. Ch.F. HEFELE, *Histoire des Conciles d'après les documents originaux*, I, 1 (Paris 1907), pp. 125ff; G. KRETSCHMAR, *Die Konzile der Alten Kirche* (Stuttgart 1961); H. JEDIN, *Breve historia de los concilios* (Barcelona 1963), pp. 10ff; B. BOTTE, "La Collégialité dans le Nouveau Testament et chez les Pères apostoliques," in *Le concile et les conciles* (Paris 1960), pp. 1ff; H. MAROT, "Conciles antenicéens et conciles oecumeniques," in ibid., pp. 45ff; S. LYONNET, "Colegialidad episcopal y sus fundamentos bíblicos," in G. BARAUNA, *La Iglesia del Vaticano II*, II (Barcelona 1966), pp. 813ff; J. HAJJAR, "La colegialidad episcopal en la tradición oriental," in ibid., pp. 831ff; G. Dejaifue, "La colegialidad episcopal en la tradición latina," in ibid., pp. 853ff; E. CORECCO, *La formazione della Chiesa Cattolica negli Stati Uniti d'America attraverso l'attività sinodale* (Brescia 1970), pp. 41ff.

was accentuated, with the disappearance of the councils in a time of exacerbated nationalism as was shown in the fifteenth-century council of Bourges.[12]

On the other hand, since the middle of the ninth century, the presence of the pontifical legates were being emphasized in the celebration of the national councils,[13] whose influence was greater during the twelfth and thirteenth centuries, in the so-called legatine councils celebrated in Castille, Leon, or Catalonia.[14] Moreover, the pope also impelled the councils of reform, the Roman synods during Lent and others, whose influence was especially felt in Italy.

The sustained historical influence of political power and of the Latin Church over the councils (which today are called plenary) explains the existence of a dual terminology during the nineteenth century to denominate these conciliar assemblies. As R. Metz has demonstrated,[15] the writers who then requested the Apostolic See to hold those councils employed the expression "national council." Not so the texts of the Roman Curia, which normally denominated as plenary councils the few conferences celebrated during the second half of that century, such as the plenary councils of the Church in the United States. That same terminology is employed in canons 281–292 of the CIC/1917 and canons 439–446 of the *CIC*.

But the agreement of the two codes in terminology does not imply identity in delimitation and range of application of the plenary council. Canon 281 of the CIC/1917, with evident vagueness, states: "The Ordinaries of several ecclesiastical provinces can meet in plenary council." Canon 439 § 1 of the CIC is quite a bit more precise: "A plenary council for all the particular churches of the same bishops' conference is to be celebrated."

Both codes show a common tendency to free the plenary council from the profound historical influence that the nationalities and political

12. Cf. J. ORLANDIS, "Funzione storica...," cit., pp. 147ff; H. JEDIN, *Breve historia...*, cit., pp. 13ff; H. SIEBEN, "Das Nationalkansil im frühen Selbstuerständnis in theologischer Tradition und in römischer Perspektive," in *Theologie und Philosophie vierteljahreschrift* 62 (1987), pp. 526-562; Idem, "Bishops' conferences in light of particular Councils during the first Millenium," in *The Jurist* 48 (1988), pp. 30–56; A. GARCÍA Y GARCÍA, "Bishops' conferences in linght of particular Councils during the second Millenium," in *The Jurist* 48 (1988), pp. 57–67; S.C. BONICELLI, *I Concili particulari da Graziano al concilio de Trento. Studio sulla evoluzione del diritto della Chiesa latina* (Brescia 1971); J.G. GAUDEMET, "L'Église dans l'Empire Romain (IVe–VIe siècles)," in G. LE BRAS, *Histoire du Droit et des institutions de l'Église en Occident*, III (Paris 1958), pp. 451–466; T. DE AZCONA, "Las Asambleas del clero en el otoño de la Edad Media," in *Miscelanea José Zunzunegui, I: Estudios históricos* (Vitoria 1975), pp. 203–245.

13. Cf. F. YARZA, *El Obispo en la organización eclesiástica de las Decretales pseudoisidorianas* (Pamplona 1985), pp. 122–130.

14. Cf. J. ORLANDIS, "Funzione storica...," cit., pp. 157–160; H. JEDIN, *Breve historia...*, cit., p. 15.

15. Cf. R. METZ, "Concile national, concile plénier, concile regional," in G. BARBERINI, *Racolta di scritti in onore di Pio Fedele*, I (Perugia 1984), pp. 534–541.

structures had exercised over it, to rescue a terminology ("plenary council") and an uninvolvement in line with its original historical realization. The progress achieved by the CIC, since entrusting the bishops' conference (with the approval of the Apostolic See) with the initiative of celebrating those councils and making their range of application coincide with that of the same Conference, promotes that operative autonomy of the bishops with respect to other structures of common geographical range.

This achievement was not possible without previously having overcome certain difficulties presented to the drafters of the present canon. It was necessary to go from several initial approaches which saw the ecclesiastical region—with a tendency to be compared with the particular churches of one common nation—as a necessary substrate for the bishops' conference to exercise its territorial power,[16] toward another vision of the ecclesiastical region disconnected from the bishops' conference,[17] so that, finally, the way was opened for the "plenary council" terminology to substitute for the term "regional council" that was initially utilized. Indeed, in the session of February 14, 1980, the secretary opposed the expression "regional council" to defend the concept of plenary council,[18] anticipating a terminology that, only at the last minute, would be introduced into the promulgated texts.[19]

The scope of the plenary council being referred to as "all the particular churches of the same Bishops' Conference" (c. 439 § 1), the same text specifies that "it is to be celebrated as often as the Bishops' Conference, with the approval of the Apostolic See, considered it necessary or advantageous." The importance of the bishops' opinion regarding the hypothetical celebration of the plenary council is thus formulated with more clarity than in the CIC/1917, whose canon 281 only acknowledged that the bishops could ask the Roman Pontiff for authorization to have the plenary council summoned by the pontifical legate. In any case, it is evident that since the plenary council is a product of the Episcopal College (though not summoned in its entirety), it cannot be celebrated but in communion with the head of the College, hence the necessity of approval by the Apostolic See of the collegial decision for its celebration.

The drafters debated whether it is more prudent for the general law to determine how often the plenary council should be celebrated, which would immediately imply approval by the Holy See of its celebration at a specific time, or to specify how those who must decide the need or usefulness of the projected plenary council should proceed. The formulation of

16. Cf. *Comm.* 17 (1985), pp. 97–98; 12 (1980), pp. 249–250; J.I. ARRIETA, "Instrumentos supradiocesanos para el gobierno de la Iglesia particular," in *Ius Canonicum* 24 (1984), pp. 620–623.
17. Cf. *Comm.* 12 (1980), pp. 246–248; J.I. ARRIETA, "Instrumentos...," cit., pp. 623–628.
18. Cf. *Comm.* 12 (1980), p. 254.
19. Cf. R. METZ, "Concile national...," cit., p. 552.

the canon guarantees to the participating bishops that their cooperation in such a council satisfies all the requirements of security and free deliberation for the good of the faithful.[20]

The criterion expressed in the canon is profoundly consistent with the information that we have regarding the oldest conciliar practice that, by searching in the plenary councils for a common hierarchical decision that would allow the faithful to work together, it always sought a judgment in communion with the Church in Rome, as the synodal letter of the bishops congregated in Ephesus shows, which was written to Pope Victor at the end of the second century,[21] or which shortly afterwards St. Cyprian showed: "*Etiam Romam super hac re scripsimus ad Cornelium collegam nostrum, qui et ipse cum pluribus coepiscopis, habito concilio in eandem nobiscum sententiam consensuit.*"[22]

The agreement concerning the bishops who would have to participate in the projected council regarding its necessity or usefulness, and the approval for its celebration by the Roman Pontiff, are also applied in § 2 of canon 439 to the proposal of celebration of a provincial council, as long as "the boundaries of this ecclesiastical region coincide with the boundaries of the country." Since bishops of more than one ecclesiastical province are not summoned to this council, it cannot be called a plenary council, but a provincial counsel. Therefore, in the preparatory work of this canon the opinion was expressed to transfer the text of this § 2 to the following canon, 440, which referred to the provincial council. Nevertheless, this criterion was not accepted, since by referring to a provincial council, with its range of participation and application coinciding with the boundaries of a country, the judgment regarding necessity or opportunity of its celebration had to be approved by the Roman Pontiff. Such foresight is due to the extensive historical experience that the Church has regarding the necessity of the Apostolic See's specifically strengthening the freedom of the bishops when their conciliar work extends over national ranges, and can influence the respective political power. Belgium, Holland, Malta, Haiti, Panama, Honduras, and other countries find themselves in the circumstances contemplated in this norm.

20. Cf. *Comm.* 12 (1980), p. 256.
21. Cf. EUSEBIUS OF CAESAREA, *Historia eclesiástica*, lib. V, ch. XXIII, in *PG*, 20, pp. 490–494; Ch. J. HEFELE, *Histoire...*, cit., pp. 140–143.
22. ST. CYPRIAN, Let. LV, 6, ed. H. Hartel, in *CSEL*, III, p. 628, 3.

440 **§ 1. Concilium provinciale, pro diversis Ecclesiis particularibus eiusdem provinciae ecclesiasticae, celebretur quoties id, de iudicio maioris partis Episcoporum dioecesanorum provinciae, opportunum videatur, salvo can. 439 § 2.**

§ 2. Sede metropolitana vacante, concilium provinciale ne convocetur.

§ 1. A provincial council, for the various particular churches of the same ecclesiastical province, is celebrated as often as, in the judgement of the majority of the diocesan bishops of the province, it is considered opportune, without prejudice to can. 439 § 2.

§ 2. A provincial council may not be called while the Metropolitan see is vacant.

SOURCES: § 1: c. 283; *SCCong* Decr. *Conciliorum provincialium,* 15 feb. 1919 (*AAS* 11 [1919] 72–74)
§ 2: c. 284

CROSS REFERENCES: cc. 119, 2°, 127, 166, 439 § 2, 446, 447–459

COMMENTARY

Eloy Tejero

To understand the ecclesial significance that the revitalization of the provincial council undertaken by Vatican II (*CD* 36) can have, a certain historical perspective is required.

1. *Historical background*

The profound feeling of communion and unity that we admired in the primitive Church dictated how the bishop should behave in the care of souls if he were to discover a cancerous member: "*imponendo multa ieiunia reseca et purifica ulcus putridum. Si vero cancer maior fit et superat etiam caustica, iudica, quod membrum sit foetidum, deinde cum aliis medicis consilium iniens et multum meditans abscinde membrum*

illud foetidum, ne totum corpus corrumptat."[1] When the Church attained the right of freedom of action from the empire and organized its jurisdictional structures by assimilating some territorial aspects of Roman administration, we saw that the provincial council was the means established to enable the bishop *cum aliis medicis consilium inire* over the larger cancers which he had not been able to cure by means of his ordinary pastoral care. Canon 5 of Nicaea certified that the bishop did not definitively resolve the cases of excommunication. He was obliged to take them to the provincial council: "*De his qui communione privantur seu ex clero seu ex laico ordine, ab episcopis per unamquamque provintiam sententia regularis obtineat, ut hii qui ab aliis abiciuntur, non recipiantur ab aliis.*" Moreover, the provincial council inquired "*ne pusillanimitate aut pertinacia vel alio quolibet episcopi vitio videatur a congregatione seclusus.*" This was the reason for obligatory celebration of the provincial council twice a year: because it had to assure with its decision who had been *rationabiliter excommunicati*, adding *ut hoc decentius inquiratur* and thus *quaestiones discutiantur huiusmodi.*[2] A little later, canon 20 of the Council of Antioch stressed the same approach: the provincial council was to be held "*propter utilitates ecclesiasticas et absolutiones earum rerum, quae dubietatem controversiamque recipiunt ... In his autem conciliis adsint presbiteri, diaconi et omnes qui se laesos existimant.*"[3] By stressing a contradictory approach, which implied dealing with synodal cases, canon 17 of Chalcedon said that if "*fiat altercatio, licere eis, qui se laesos asserunt, apud sanctam synodum provinciae de his movere certamen.*"[4]

The authoritative character of this remedy in the case of excommunication and other cases found by the bishops or among provincial bishops, which we observed in the provincial synods of the Roman era, became blurred due to the Germanic invasions. First, it became blurred due to the collapse of conciliar activity (definitive in regions like Africa or during one century in Gaul and in Spain), but also because, by preserving the memory of a previous world whose public administration was organized into provinces, the feudal organization was sanctioned by the personal patronage of the nobles, the greatest of whom was the monarch. When, from the sixth century, conciliar activity began again in France and Spain, it was to proceed under the impulse of historical factors very different from the profound sense of *communio hierarchica* that motivated the councils in the

1. *Didascalia*, II, XLI, 6 and 7, in *Didascalia et constitutiones Apostolorum*, ed. F.X. FUNK (Paderbornae 1905), pp. 130–132.
2. "Discipline générale antique," ed. P.P. JOANNOU, in *P.C. per la Redazione del Codice di Diritto Canonico Orientale*, IX (Rome 1962), p. 27.
3. Ibid., p. 120.
4. Ibid., p. 83. Cf. K. GIRARDET, "Appellatio. Ein Kapitel Kirchlicher Rechtsgeschichte in den Kanones des vierten Jahrhunderts," in *Historia* 23 (1974) 98–127; A. PAMPILLÓN, *La acusación y el juicio de Obispos en la normativa de los siete primeros siglos*, pro manuscripto (Pamplona 1980).

fourth century: the *causas episcoporum* would no longer be set forth in provincial councils but before the metropolitan council,[5] before a mixed tribunal of ecclesiastics and seculars,[6] or before an audience of the king.[7] Thus, as was stated repeatedly by historians, the provincial council declined:[8] historical circumstance prevented it from understanding and dealing with the *causas episcoporum* now resulting from the structures of the feudal world and, in the last instance, by the monarch, who imposed his decisions over those of the metropolitan council.

The attempts at reform in the nineteenth century intended to reestablish the *libertas Ecclesiae* in the treatment of the *causas episcoporum* stressed that the provincial council, celebrated in the presence of the legates of the Holy See, was the competent authority. Not so in the Gregorian reform of the sixteenth century, in which, according to some centralizing tendencies, the application of the principles of reform was extended by means of the decisions of legates and nuncios of the Apostolic See, although they acted, sometimes, by convening provincial councils. The fourth Lateran Council, in a general norm that became the *Corpus Iuris Canonici*,[9] ordered the annual celebration of a provincial council: "*Metropolitani ad correctionem excesuum et reformationem morum singulis annis facere debent provinciale concilium, in quo statuere debent personas idoneas per singulas dioeceses, quae sollicite investigent, et sequenti concilio referant corrigenda.*" As is seen, no longer were the provincial bishops and all those who considered themselves prejudiced by episcopal decisions the ones who presented the cases to be resolved in the deliberations of the provincial council, as in the Roman era. The particular churches had lost the initial impulse to present cases to the provincial council; therefore, it was ordered that suitable persons investigate for a year in the dioceses, and refer to the provincial council what had to be corrected.

The Council of Trent spoke of a renewal of the provincial council "*pro moderandis moribus, corrigendis excessibus, controversiis componendis, aliisque ex sacris canonis permissis,*" and ordered it to be

5. Cf. CONCILIO DE MAÇON (a. 585), c. 9, in *Concilia Galiae a. 511–a. 695*, ed. C. DE LECLERCQ, in *CCh*, 148A (Turnholt 1963); A. PAMPILLÓN, *La acusación...*, cit., pp. 389–396.

6. Cf. Council of Toledo, XIII (a. 683), c. 2; A. PAMPILLÓN, *La acusación...*, cit., pp. 466–475.

7. Cf. ibid., c. 8; A. PAMPILLÓN, *La acusación...*, cit., pp. 472–475.

8. Cf. F.J. MURPHY, *The legislative Powers of the Provincial Council. A historical synopsis and commentary*, (Washington 1947), pp. 3–26; J. ORLANDIS, "Funzione storica e ecclesiologica dei concili particolari," in M. GHISALBERTI-G. MORI, *La sinodalità nell'ordinamento canonico* (Padova 1991), pp. 149–152; G. MARTÍNEZ DÍEZ, "Del decreto tridentino sobre los concilios provinciales a las conferencias episcopales," in *Hispania Sacra* 16 (1963), pp. 250–263; A. GARCÍA Y GARCÍA, "Las conferencias episcopales a la luz de la historia," in *Salmanticensis* 23 (1976), pp. 559–561.

9. Cf. *X* V, 1, 25.

celebrated every three years.[10] Nevertheless, neither the prior uses nor the progressive attribution of competences to the Roman congregations, during the pre-council era, could begin a revitalization of the provincial councils, though Sixtus V, upon establishing the competences of the Roman Curia, entrusted this task to the congregation of the Council.[11] It was sufficient to consult the indices of the *Collectio Lacensis* to verify that, by the provincial synods' having displayed a notable development of canonical discipline in the modern age, its celebration, except in the ecclesiastical province of Tarragon, was very far from the triennial rhythm established in Trent. No wonder, therefore, that the *CIC*/1917, in its canon 283, would lengthen, up to twenty years, the time established for the obligatory celebration of the provincial council.

2. *Convocation of a provincial council*

The *CIC* does not establish an obligatory time limit for the convening of this council. It only states that it "is celebrated as often as, in the judgment of the majority of the diocesan bishops of the province, it is considered opportune." There was no lack of authors who had considered that, in light of the importance that the bishops' conferences acquired in the *CIC* (cc. 447–459) the particular councils (also the provincial councils) had lost a good part of their ecclesial utility. We do not share that opinion because canon 455 limits the range of the decrees of the bishops' conference in a band so narrow, that it is very far from being able to assume the legislative responsibility of the particular scope the *CIC* had in mind as an ordering principle for what is normally dealt with. Among the received mandates, as standards to follow in the entire revision process of the *CIC*, the fifth mandate emphasizes that the principle of subsidarity be emphasized, which has a greater validity in the Church, since the episcopal office, with its attendant powers, comes from divine law. This emphasizes the importance in respect to legislative unity and universal or general law, that it not hinder what "in virtue of this principle and provided that legislative unity and universal and general law are respected, one may defend the appropriateness and even the necessity of providing for the welfare especially of individual institutes through particular laws and the recognition of a healthy autonomy of particular executive power."[12]

To the extent that the ecclesiology of Vatican II has emphasized the importance of the above-mentioned principle, it connects with the operative ambit observed in the provincial councils of former times. This does not mean that they have to be limited to performing activities preferentially in the

10. Cf. Session XXIV on reform, ch. II.
11. Cf. Ap. Const. *Immensa aeterni Dei*, January 2, 1588, *Magnum Bullarium Romanum* (Luxembourg 1742), fol. 670.
12. *Preface*, in *Pamplona Com*, p. 55.4

judicial context, as happened in the historical time under discussion. Since then, canonical learning and technical matters have evolved a great deal. But that historical precedent seems to us extraordinarily suggestive of pondering the importance of the particular councils, and specifically of the provincial council, in our times, when the particular churches should formulate their particular law in correspondence to so many specific calls to do so contained in the *CIC*. No wonder, therefore, that an ecclesiastical province of a historic model tradition, like the Tarragonese, has after the first two years necessary for the assimilation of today's legislative criteria, already called its first provincial council of this new historic stage.

The decision of celebrating a provincial council takes on a new significance. It passes from being held every twenty years to being an option that should be realized "as often as, in the judgment of the majority of the diocesan bishops of the province, it is considered opportune, without prejudice to can. 439 § 2." In relation to this innovation it is set forth that, if it makes sense, the bishops should consult the Holy See about the celebration of the provincial council. In the formulation of the *CIC*/1917, there was no place for that consultation because the general law, by mandating its celebration every twenty years, made it useless. The present formula does not render meaningless such a consultation regarding its being opportune, especially by keeping in mind that it is in harmony with the importance of the Apostolic See in the normative acts of hierarchical communion, of which the councils are an expression. Canon 446 requires that the Holy See review the acts of the council before their promulgation. Therefore, L. Chiappetta says that it is a duty of right action to inform the Apostolic See about the decision to celebrate the provincial council.[13] But it is the will of the co-provincial bishops that is constitutive of the decision to celebrate it.

The automatic temporal demand established in canon 283 of the *CIC*/1917 ensured that, after twenty years, the provincial council was to be celebrated even though "the see of the archbishop is lawfully impeded or vacant" (c. 284 *CIC*/1917). The discretion regarding the decision to celebrate the council, established by canon 440 of the *CIC*, makes the mandate reasonable in its § 2: "A provincial council may not be called while the Metropolitan see is vacant."

To follow the procedure for the manifestation of the opinion of the co-provincial bishops regarding the celebration of the provincial council, a prior summons to all the suffragan bishops must be made, there being present the majority of those who should be summoned and there having been shown an absolute majority of votes in favor of the council (cc. 119, 2°, 127 and 166).

13. Cf. L. CHIAPPETTA, commentary on cc. 439–440, in *Il Codice di Diritto Canonico*, I (Naples 1988), p. 526.

441 Episcoporum conferentiae est:
1° convocare concilium plenarium;
2° locum ad celebrandum concilium intra territorium conferentiae Episcoporum eligere;
3° inter Episcopos dioecesanos concilii plenarii eligere praesidem, ab Apostolica Sede approbandum;
4° ordinem agendi et quaestiones tractandas determinare, concilii plenarii initium ac periodum indicere, illud transferre, prorogare et absolvere.

It is the responsibility of the Bishops' conference:
1° to convene a plenary council;
2° to choose a place within the territory of the Bishops' conference for the celebration of the council;
3° to elect from among the diocesan bishops a president of the plenary council, who is to be approved by the Apostolic See;
4° to determine the order of business and the matters to be considered, to announce when the plenary council is to begin and how long it is to last, and to transfer, prorogue and dissolve it.

SOURCES: cc. 281, 288

CROSS REFERENCES: cc. 29, 119, 166, 431 § 1, 439 § 1, 441, 3°, 450, 451, 455 § 2

COMMENTARY

Eloy Tejero

If canon 439 § 1 attributes to the discretion of the bishops' conference the authority to celebrate a plenary council, the competence of the bishops' conference to summon the participants to that council appears even more amazing. This competency, we remember, in c. 281 of the *CIC* 1917 was attributed to the legate of the Roman Pontiff.

In the initial work of codification, the proposal of some consultors to fix a period of ten years for the celebration of the plenary councils and twenty years for the provincial councils was not accepted.[1] Therefore, the convening of the plenary council—assuming the decision for its celebration conforms to canon 439 § 1—derives its juridical force from the

1. Cf. *Comm.* 17 (1985), pp. 98–99.

will of those who make up the plenary meeting of the bishops' conference, hence the importance of specifying the requirements to meet that manifestation of will.

Taking into consideration the provision of canon 455 § 2, which, for the validity of the general decrees of the bishops' conference, establishes the necessity that "at a plenary meeting, they must receive at least two thirds of the votes of those who belong to the Conference with a deliberative vote," J. I. Arrieta considers that same two-thirds voting requirement must be applied to the will of the Conference that convenes the plenary council.[2] Nevertheless, there is doubt about this opinion because the convening of the plenary council is not a general decree that "establishes common provisions for a community capable of being a passive subject of a law" (c. 29). Those provisions will be established by the council that the act of the Conference decides to convene; but the council may not be confused with the full meeting of the Conference that convenes the plenary council.

Regarding the plenary meetings of the Conference, canon 451 mandates that each bishops' conference draft its statutes, which have to be reviewed by the Apostolic See. In case the statutes make no mention of how to proceed to convene the plenary council, the general provisions in effect regarding acts of juridical persons (c. 119) and regarding the summoning of the members of a college or group (c. 166) should be followed.[3] These canons do not require a majority of two-thirds as does canon 455 § 2, but an absolute majority.

The same criterion will have to be followed regarding the designation of the place where the plenary council will be held, election of its president, determination of regulations, stating the issues to be discussed, date of commencement and duration of the plenary council, its transfer, extension, and conclusion, all of which fall also to the bishops' conference.

Since canon 441, 3° provides that the president of the plenary council has to be elected from "among the diocesan bishops," those comparable to them may not be elected, nor the coadjutors nor the auxiliaries, who, since they form part of the bishops' conference (c. 450), will be the electors of the president of the plenary council, even though they are not eligible to fulfill that function themselves.

Once the president of the plenary council is elected and approved by the Holy See, he will proceed in all its work, obeying all the provisions that the Bishops' conference has made in accordance with this canon.

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2. Cf. J.I. ARRIETA, commentary on cc. 441–442, in *Pamplona Com.*
3. Cf. F. LÓPEZ-ILLANA, "La celebrazione ed il riconoscimento dei concili particolari nel Codice di diritto canonico con note sussidiarie," in *Palestra del Clero* 67 (1988), p. 1099.

442 **§ 1. Metropolitae, de consensu maioris partis Episcoporum suffraganeorum, est:**
1° convocare concilium provinciale
2° locum ad celebrandum concilium provinciale intra provinciae territorium eligere;
3° ordinem agendi et quaestiones tractandas determinare, concilii provincialis initium et periodum indicere, illud transferre, prorogare et absolvere.

§ 2. Metropolitae, eoque legitime impedito, Episcopi suffraganei ab aliis Episcopis suffraganeis electi est concilio provinciali praeesse.

§ 1. It is the responsibility of the Metropolitan, with the consent of the majority of the suffragan bishops:
1° to convene a provincial council;
2° to choose a place within the territory of the province for the celebration of the provincial council;
3° to determine the order of business and the matters to be considered, to announce when the provincial council is to begin and how long it is to last, and to transfer, prorogue and dissolve it.

§ 2. It is the prerogative of the Metropolitan to preside over the provincial council. If he is lawfully impeded from doing so, it is the prerogative of a suffragan bishop elected by the other suffragan bishops.

SOURCES: § 1: cc. 284, 288
§ 2: c. 284,2°

CROSS REFERENCES: cc. 119, 1° et 2°, 127 § 1

COMMENTARY

Eloy Tejero

In parallel with the preceding canon, the competences of the metropolitan with respect to the convening of a provincial council, its place of celebration, etc., are established in this canon.

Although it deals with points whose competence falls on the metropolitan, the *CIC* has reinforced the juridical value, within those extremes, of the opinion of the suffragan bishops. While canon 284, 1° of the *CIC/1917* stated that the metropolitan acted on these points "after having heard all those who must attend the council with deliberative vote," the

current canon 442 § 1 states that he exercises these competences "with the consent of the suffragan bishops."

In light of the provisions in canon 127 § 1, it is evident that, according to this formula, the validity of convening the provincial council by the metropolitan (and for the rest of the actions stated in canon 442 § 1) requires the prior convening of the suffragan bishops so that they give their consent to these purposes by absolute majority vote, as stated in canon 119, 1° and 2°.

But at the same time, it is necessary to delimit, with the greatest possible precision, the sense in which the provisions of canon 127 § 1 are applicable to the precept of canon 442 § 1, which requires the consent of the majority of the suffragan bishops so that the metropolitan can carry out the acts therein mentioned—because an incorrect reading of canon 127 § 1, in relation to canon 442 § 1, could lead to truly disproportionate conclusions.

The CPI has responded negatively to a question formulated thus: "If when the Law establishes that to realize certain acts the Superior needs the consent of some college or group of persons, in conformance with the norm of canon 127 § 1, the same Superior has the right to cast his vote together with the rest, at least to resolve a tie in the voting."[1] Consequently, an indiscriminate application of the provisions of canon 127 § 1 to the action of the metropolitan, foreseen in canon 442 § 1, and to the prior consent of the suffragan bishops, would produce an irrational conclusion: the metropolitan would not have the right to deliberate and vote with the suffragan bishops regarding the convening of the provincial council and the point contemplated in canon 442 § 1. We would have passed from the regimen of *CIC*/1917, canon 284, 1°, which attributed these actions to the metropolitan, having heard the suffragans, to another in which the suffragans would deliberate separately from the metropolitan, in order for him to act later according to what has been agreed upon by the suffragans.

The irrationality of this conclusion proceeds from not keeping in mind that the provisions of c. 127 § 1 make reference to one specific type of juridical act, namely, collegial acts: those in which, with the will of the superior, the will of a body, group, or college must concur when called to give their consent in separate actions in cases contemplated by law.

But the acts contemplated by canon 442 § 1 are far from being considered as complex collegial acts. We have to see them as simple collegial acts because the metropolitan is not separated from the body or group of the suffragans that consent to the convening of the provincial council; instead, he is integrated into the *coetus* of those who deliberate over the provincial council. For this reason canon 442 § 1 states, "It is the responsibility of the Metropolitan, with the consent of the majority of the suffragan

1. CPI, Resp., July 5, 1985, in *AAS* 77 (1985), p. 771.

bishops..." That is to say: here the consent of the majority of the *coetus episcopalis*, regarding the actions of the metropolitan referring to the same *coetus episcopalis*, the same metropolitan necessarily is one of its members, whose action has received a referendum of communion by the consent of the suffragans in an act taken by all those who have a deliberative vote in the same collegial act. Canon 119 regulates how these acts should be carried out and attributes to the president—in this case to the metropolitan—the right to resolve a tie with his vote after two unsuccessful ballots.

443 § 1. **Ad concilia particularia convocandi sunt atque in eisdem ius habent suffragii deliberativi:**
1° Episcopi dioecesani;
2° Episcopi coadiutores et auxiliares;
3° alii Episcopi titulares qui peculiari munere sibi ab Apostolica Sede aut ab Episcoporum conferentia demandato in territorio funguntur.

§ 2. **Ad concilia particularia vocari possunt alii Episcopi titulares etiam emeriti in territorio degentes; qui quidem ius habent suffragii deliberativi.**

§ 3. **Ad concilia particularia vocandi sunt cum suffragio tantum consultivo:**
1° Vicarii generales et Vicarii episcopales omnium in territorio Ecclesiarum particularium;
2° Superiores maiores institutorum religiosorum et societatum vitae apostolicae numero tum pro viris tum pro mulieribus ab Episcoporum conferentia aut a provinciae Episcopis determinando, respective electi ab omnibus Superioribus maioribus institutorum et societatum, quae in territorio sedem habent;
3° Rectores universitatum ecclesiasticarum et catholicarum atque decani facultatum theologiae et iuris canonici, quae in territorio sedem habent;
4° Rectores aliqui seminariorum maiorum, numero ut in n. 2 determinando, electi a rectoribus seminariorum quae in territorio sita sunt.

§ 4. **Ad concilia particularia vocari etiam possunt, cum suffragio tantum consultivo, presbyteri aliique christifideles, ita tamen ut eorum numerus non excedat dimidiam partem eorum de quibus in §§ 1–3.**

§ 5. **Ad concilia provincialia praeterea invitentur capitula cathedralia, itemque consilium presbyterale et consilium pastorale uniuscuiusque Ecclesiae particularis, ita quidem ut eorum singula duos ex suis membris mittant, collegialiter ab iisdem designatos; qui tamen votum habent tantum consultivum.**

§ 6. **Ad concilia particularia, si id iudicio Episcoporum conferentiae pro concilio plenario aut Metropolitae una cum Episcopis suffraganeis pro concilio provinciali expediat, etiam alii ut hospites invitari poterunt.**

§ 1. The following have the right to be summoned to particular councils and have the right to a deliberative vote:
1° diocesan bishops;
2° coadjutor and auxiliary bishops;
3° other titular bishops who have been given a special function in the territory, either by the Apostolic See or by the Bishops' conference.

§ 2. Other titular bishops who are living in the territory, even if they are retired, may be called to particular councils; they have the right to a deliberative vote.

§ 3. The following are to be called to particular councils, but with only a consultative vote:
1° Vicars general and episcopal Vicars of all the particular churches in the territory;
2° the major Superiors of religious institutes and societies of apostolic life. Their number, for both men and women, is to be determined by the Bishops' conference or the Bishops of the province, and they are to be elected respectively by all the major Superiors of institutes and societies which have an establishment in the territory;
3° the rectors of ecclesiastical and catholic universities which have an establishment in the territory, together with the deans of their faculties of theology and canon law;
4° some rectors of major seminaries, their number being determined as in n.2; they are to be elected by the rectors of seminaries situated in the territory.

§ 4. Priests and others of Christ's faithful may also be called to particular councils, but have only a consultative vote; their number is not to exceed half of those mentioned in §§ 1–3.

§ 5. The cathedral chapter, the council of priests and the pastoral council of each particular church are to be invited to provincial councils, but in such a way that each is to send two members, designated in a collegial manner. They have only a consultative vote.

§ 6. Others may be invited to particular councils as guests, if this is judged expedient by the Bishops' conference for a plenary council, or by the Metropolitan with the suffragan bishops for a provincial council.

SOURCES: § 1: cc. 282 §§ 1 et 2, 286 §§ 1 et 2
§ 2: cc. 282 § 2, 286 § 2
§ 3: cc. 282 § 3, 286 § 4
§ 4: cc. 282 § 3, 286 § 4
§ 5: c. 286 § 3

CROSS REFERENCES: cc. 368, 381 § 2, 427, 450 § 1, 454 § 2

COMMENTARY

Eloy Tejero

The structural parallelism existing between the plenary and provincial council allows this canon to regulate the participation of those who must be summoned to the particular councils by fixing applicable criteria, according to their respective range, to the plenary council and to the provincial council. Paragraphs 1 and 2 determine the participation of those who have a deliberative vote, and §§ 3–5 those who have a consultative vote and § 6 refers to those who can be invited as guests.

By comparing the list given in canon 443 § 1, which describes those who must be invited with a deliberative vote, with canon 450 § 1, which determines who belongs to the bishops' conference, we observe several differences whose meaning is important to specify: the non-mention of those equivalent in law to the diocesan bishop (cc. 368 and 351 § 2), among the participants in the particular councils, which was enumerated in canon 443 § 1, does not seem to annul comparison with the bishops, which the law itself establishes, and which also obliges their being summoned and their participation in a deliberative vote. The same must be said of the diocesan administrator, (c. 427), who likewise is not expressly mentioned in the canon under discussion.

Since the function that the legate of the Roman Pontiff had in the plenary councils (c. 281 *CIC*/1917) has ceased, the lawmakers asked themselves if they had to be called to participate with a deliberative vote. The affirmative opinion considered that such participation was required *reverentiae causa*. The negative opinions considered that, if there had to be such a summoning, it could cause certain difficulties like the power to dissent regarding the president of the council or that, by having a deliberative vote, the legate's opinion could be rejected by another majority contrary opinion.[1] Canon 443 § 1, 3° includes among those who have to be summoned to the particular councils—therefore, likewise to the provincial councils—"other titular bishops who have been given a special function in the territory, either by the Apostolic See or by the Bishops' Conference." This is a formula repeated in canon 450 § 1, regarding participation in the Bishops' conference.

Regarding the classification of the vote of the auxiliary bishops and other titular bishops there are also differences between what is provided for in canon 443 §§ 1 and 2, which grants them a deliberative vote in the particular councils, and that which is provided for in canon 454 § 2, which leaves to the statutes of the bishops' conference the determination of the

1. Cf. *Comm.* 17 (1985), p. 100.

classification of those that the auxiliary bishops and other titular bishops must have.

In contrast to the voting participants mentioned in §§ 1 and 2 of canon 443, who exercise a strictly jurisdictional function in the particular councils, those mentioned in §§ 3–6 carry out a series of activities, which can be of a diverse nature, although none of them surpasses the level of a consultative vote, which, because of their expertise, specialization, or kind of opinion is attributed to them.

Among the references to the participants at this level, the most vague formula is that of § 4: "Priests and others of Christ's faithful may also be called to particular councils, but have only a consultative vote." When the preparatory work of the *CIC* was already quite far along, the vagueness of this formula received strong criticism for its indefiniteness: "this text indefinitely broadens the number of participants in the council and also permits the participation of lay faithful. Thus the schema seems *to institutionalize* the large groups that in not a few regions of Europe had met in the years after Vatican Council II, whose fruits cannot be considered plainly and totally good.

"It is true that the *Schema* reserves a deliberative vote to the bishops, but it does not seem to consider sufficiently the importance of a consultative vote of a broad group and the force that is given to it by the present means of communication. Thus, so that the council does not become an instrument in the hands of certain pressure groups it is proposed ... that the number of those who can be invited to the council be limited."[2] The response of the secretariat states: "Keep in mind what was said in the revision of the corresponding canons, especially with respect to the number of persons who have to be summoned to the councils with only a consultative vote."[3] It was when the limitation was introduced into canon 443 § 4 that the participants contemplated in that text "their number is not to exceed half of those mentioned in §§ 1–3."

2. *Comm.* 14 (1982), p. 191.
3. Ibid., pp. 191 and 194.

444 **§ 1. Omnes qui ad concilia particularia convocantur, eisdem interesse debent, nisi iusto detineantur impedimento, de quo concilii praesidem certiorem facere tenentur.**

§ 2. Qui ad concilia particularia convocantur et in eis suffragium habent deliberativum, si iusto detineantur impedimento, procuratorem mittere possunt; qui procurator votum habet tantum consultivum.

§ 1. All who are summoned to particular councils must attend, unless they are prevented by a just impediment, of whose existence they are obliged to notify the president of the council.

§ 2. Those who are summoned to a particular council in which they have a deliberative vote, but who are prevented from attending because of a just impediment, can send a proxy. The proxy, however, has only a consultative vote.

SOURCES: § 1: cc. 282 §§ 1 et 2, 286 §§ 1, 3 et 4, 287 § 1, 289
§ 2: c. 287

CROSS REFERENCES: c. 167 § 1

COMMENTARY

Eloy Tejero

Given the density of the ecclesial and hierarchical communion that characterize the plenary and provincial councils, it is evident that all the bishops summoned are obliged to attend. Only an insurmountable impediment could justify an absence of this nature, which cannot be evaluated by the affected bishop alone; rather, he must show to the president of the council that this impediment exists. The same criterion is applied to all those called to participate in the conciliar sessions, even though they are not bishops, for their attendance, according to the normative discernment of the works the council is to accomplish, claims an especially meaningful importance.

Once the existence of an insurmountable obstacle to one of those summoned who has a deliberative vote has been certified, the figure of proxy is justified. This figure was considered old-fashioned by some in the preparatory work of codification: "Proxies should not be sent to these councils; the bishops should come; proxies made sense previously when

there were many difficulties in traveling."[1] Since this was a minority opinion, it seemed important to leave open the faculty of sending an proxy, "mittere possunt," without maintaining the obligatory nature of sending him that was in the *CIC*/1917, canon 287 § 1. We are, thus, facing a specific situation in which the criterion of canon 167 § 1 is broken, "the faculty of voting by proxy is excluded." Nevertheless, the vote of the proxy in the particular council is merely consultative.

1. *Comm.* 12 (1980), p. 281.

445 **Concilium particulare pro suo territorio curat ut necessitatibus pastoralibus populi Dei provideatur atque potestate gaudet regiminis, praesertim legislativa, ita ut, salvo semper iure universali Ecclesiae, decernere valeat quae ad fidei incrementum, ad actionem pastoralem communem ordinandam et ad moderandos mores et disciplinam ecclesiasticam communem servandam, inducendam aut tuendam opportuna videantur.**

A particular council is to ensure that the pastoral needs of the people of God in its territory are provided for. While it must always respect the universal law of the Church, it has power of governance, especially legislative power. It can, therefore, determine whatever seems opportune for an increase of faith, for the ordering of common pastoral action, for the direction of morals and for the preservation, introduction and defence of a common ecclesiastical discipline.

SOURCES: c. 290; *CD* 36; *DPMB* 213

CROSS REFERENCES: cc. 12 § 2, 19, 20, 447, 455 § 1, 516, 518, 521, 536, 537, 548, 553, 554, 555, 749 §§ 1 et 2, 753, 823

COMMENTARY

Eloy Tejero

Although a proposal came to be drafted in the initial work on the present Code that identified the normative competence of the particular councils and the bishops' conferences,[1] soon the importance of suppressing it was realized.[2] From then on, the differentiated treatment of their respective competences permitted a clear formulation of the legislative power proper to the particular councils, as we find in this canon, very different from canons 447 and 455, relative to the bishops' conference.

1. *The power of governance of a particular council*

The power of governance, especially legislative, that corresponds to the particular councils is not a mere sum of the powers that each of the

1. Cf. *Comm.* 17 (1985), p. 106.
2. Cf. *Comm.* 12 (1980), p. 255.

bishops has in his respective particular church. It transcends the bishops and their own diocesan synods, for the power of the particular council is one of the forms that circumscribe the exercise of the power of the bishops in the *cotidiana cura animarum* (*LG* 27).

The universal proper law of the Church is obliged also to assess the importance of particular legislation, not only to plug gaps (c. 19), but also to recognize the possibility that certain universal laws might not be valid in a certain territory (c. 12 § 2) because of a normative content proper to the particular law. Hence the principle established by canon 20: "A universal law, however, does not derogate from a particular or from a special law, unless the law expressly provides otherwise."

It cannot be denied that the bishops' conferences are intended to furnish their typical contributions to the particular law. However, as "only in cases where the universal law has so prescribed, or by special mandate of the Apostolic See" (c. 455 § 1) can the conferences carry out their own normative contributions in the form of general decrees and not laws, it is evident that such decrees are not intended to fulfill a specific function that the *CIC* attributes to particular legislation.

Regarding the importance of the task proper to the particular laws in the *CIC*, it must be kept in mind, moreover, that we have passed from one juridical system previously merely permissive of the normative acts of the particular councils, since they could formulate their norms *praeter ius*,[3] or, as the Council of Trent said, on subjects "ex sacris normis permissis,"[4] to another, in which the very *CIC*, by fulfilling the mandate received regarding the principle of subsidarity and harmonious contribution of supreme legislator and of the bishops in the care of souls,[5] repeatedly makes explicit references to particular law so that it formulates its own laws in development of so many criteria, stated with the legislative reserve typical of the *CIC*.

From the new coordinated norms of the particular law it is understood that the legislator might have formulated, in terms of breadth, the power of governance for the particular councils. Such power, referring especially to the legislative context, can be extended also to decisions in other contexts. Because, besides the important function exercised historically by these councils in the discussion and debate about the most diverse matters—reflected in *CIC*/1917, canon 290, which attributed competency to them "*ad corrigendos abusus, ad controversias componendas*"—the expression of canon 445, so that, always respecting the universal law of the Church, it can establish what seems opportune...,"

3. Cf. F.J. MURPHY, *Le legislative Powers of the Provincial Council. A historical synopsis and commentary* (Washington 1947), pp. 45–47.
4. Session XXIV on reform, ch. II.
5. Cf. *Preface*, in *Pamplona Com*, p. 55.

recognized in them a power of acting that did not end with the power to make particular laws.

2. *Matters that can be the object of conciliar canons*

In addition to expounding on the power of the particular councils from the formal point of view of their acts, especially legislative, canon 445 states, with the breadth of approach that we are observing, the great considerations of the subjects that, "while it must always respect the universal law of the Church," can be an object of their discernment and canons, within the ambit of their territory.

a) *Establishment when it seems opportune for the increase of the faith*

This formulation, taken from canon 290 of the *CIC*/1917, far from influencing the specific competency to proclaim "by a definitive act the doctrine that should be maintained on the subject of faith and morals," which corresponds to the Supreme Pontiff and to all the College of Bishops, and implies infallibility in the magisterium (c. 749 §§ 1–2), this formulation makes reference to the measures of governance to intensify the assimilation of the truths of the faith on the part of the faithful, like catechesis and doctrinal formation. One of the many means that the particular councils can adopt, for the increase of the doctrine, is the exposition of the catholic faith. Then the bishops, "while not infallible in their teaching, are the authentic instructors and teachers of the faith for Christ's faithful entrusted to their care. Christ's faithful are bound to adhere, with a religious submission of mind, to this authentic magisterium of their bishops" (c. 753). It is obvious, therefore, that the particular councils should not consider that they themselves are intended to decide doctrinal differences, in subjects still not defined by the Apostolic See or the Ecumenical Council. In areas where there is doubt, it is more prudent to wait so as not to damage the legitimate freedom of the faithful.[6] In relation to the content of the faith, they are "to safeguard the integrity of faith," "to ensure that in writings or in the use of the means of social communication there should be no ill effect on the faith," "to demand that where writings of Christ's faithful touch upon matters of faith and morals, these be submitted to their judgment," and "to condemn writings which harm true faith" (c. 823).

b) *Organization of common pastoral activity*

Also this nucleus of the competences that correspond to the particular councils shows its profound influence in the canonical order, which

6. Cf. BENEDICT XIV, *De Synodo Diocesana*, lib. VII, ch. I and II (Rome 1768), pp. 117ff.; D. BOUIX, *Tractatus de concilio provinciali* (Paris-Lyon 1862), pp. 504ff.

extends its concern over many acts of common pastoral activity, whose significance in the *communio fidelium* is evident.

Hence the importance that also in this nucleus the particular council tries to keep the universal law of the Church untouched.

The coherence of the dispositions established in the particular councils with the nature and activities proper to the episcopal ministry and presbyteral order, the profound assimilation of sacramental actions and of their fruits, and the service to the rights of the faithful, are considerations especially meaningful regarding the norms to be promulgated over the organization of common pastoral activity; one of the most typical manifestations of this is found in the parish. This is why the frequent referral to particular law, which the *CIC* makes in the canons relating to the parish community, becomes more significant.[7]

c) *The direction of morals*

If it is easy to perceive the echoes of the two previous nuclei in the canons of the particular councils celebrated at any historical moment of the Church,[8] the importance of those councils in the *reforma morum*, especially since the end of the sixteenth century, is particularly marked. Given the intimate connection between the infallible formulations of the faith and that of morals, the specifications made regarding the genuine magisterium of the particular councils have application to this nucleus (c. 753) and their own competence to issue appropriate measures of governance, to induce the faithful to raise their moral standards and to encourage the sacred ministers, the religious, and the members of all the people of God to contribute to that betterment of morals, which in our times has to be inspired by the doctrine of Vatican II regarding the universal call to holiness.

d) *The observance, establishment, or safeguarding of common ecclesiastical discipline*

Directly related to the content of apostolic tradition, formulated from the first century as *didascalia Apostolorum*, common ecclesiastical discipline constitutes a basic value in relation to the norms of the canoni-

7. Cf. cc. 516, 518, 521, 536, 537, 548, 553, 554, 555.

8. Cf. "Discipline générale antique," ed. P.P. JOANNOU, in *P.C. per la Redazione del Codice di Diritto Canonico Orientale*, IX (Rome 1962); CH. MUNIER, "Concilia Africae, a. 345–a. 525," in *Corpus christianorum, Series latina*, CXLIX (Turnholti 1974); Idem, "Concilia Galliae, a. 314–a. 506," in ibid., CXLVIII (Turnholt 1963); C DE CLERCQ, "Concilia Galliae, a. 511–a. 695," in ibid., CXLVII (Turnholt 1963); J. VIVES, *Concilios visigóticos e Hispano-Romanos* (Madrid 1963); A. WERMINGHOFF, "Concilia aevi Karolini," in *Monumenta Germaniae historica, Legum sectio III. Concilia*, II, pars I and II (Hannover and Leipzig 1906 and 1908); W. HARTMANN, "Die Konzilien der karolingischen Teilreiche 843–859," in ibid., *Concilia*, III (Hannover 1984); W. BANDMÜLLER-R. BÄUMER, "Annuarium Historiae Conciliorum," in *Internationale Zeitschrift für Konziliengeschichtsforschung* Jahrgang 1–22 (1969–1990).

cal order and to the pastoral needs of the people of God: the form of life that corresponds to those who exercise the sacred ministries, the specific way to achieve them, the personal qualities of those who are going to be *mancipati circa sacra*, the catechesis of those who want to join the Church or who already belong to it, the remedies to cure moral deficiencies or to repress larger disorders, the channels of motivation and assimilation of the holiness of life on the part of the faithful, and other content of this order give reason of the high meaning that common ecclesiastical discipline has, whose establishment, observance, or defense must be encouraged by the particular councils.

446 **Absoluto concilio particulari, praeses curet ut omnia acta concilii ad Apostolicam Sedem transmittantur; decreta a concilio edicta ne promulgentur, nisi postquam ab Apostolica Sede recognita fuerint ipsius concilii est definire modum promulgationis decretorum et tempus quo decreta promulgata obligare incipiant.**

When a particular council has concluded, the president is to ensure that all the acts of the council are sent to the Apostolic See. The decrees drawn up by the council are not to be promulgated until they have been reviewed by the Apostolic See. The council has the responsibility of defining the manner in which the decrees will be promulgated and the time when the promulgated decrees will begin to oblige.

SOURCES: c. 291

CROSS REFERENCES: cc. 7, 8 § 2, 299, 455 § 2, 456, 838 § 2, 1120

COMMENTARY

Eloy Tejero

The reviewing of the acts of the particular council, which the Apostolic See must accomplish, does not equal confirmation or corroboration, but control that the head of the Episcopal College exercises over the work of the particular council. This gives a canonical basis to the conciliar norms through a *commune consilium* and a *communnis comminatio decretorum*, which, by its very expression of *communio hierarchica*, implies a *communio* with the head of the Episcopal College. Therefore, the recognition of its acts by the Apostolic See, established by Sixtus V, is very coherent with the nature of the particular council.[1]

The Congregation for bishops "deals with matters pertaining to the celebration of particular councils ... receives the acts of these bodies and, in consultation with the dicasteries concerned, it examines the decrees which require the *recognitio* of the Apostolic See" (*PB* 82). Among the dicasteries interested in this revision, the PCILT deserves special mention which "at the request of those interested, this Council determines whether particular Laws and general decrees issued by legislators below the level of the supreme authority are in agreement or not with the universal laws of the Church"

1. Cf. SIXTUS V, Ap. Const. *Immensa aeterni Dei*, 2.1.1588, in *Magnum Bullarium Romanum* (Luxemburg 1742), fol. 670.

(*PB* 158. When the particular council takes place in a territory within the competence of the CEP, it reviews the acts of that council.

Before revision, as canon 466 states, "the council has concluded." The participants with deliberative vote have signed the acts. Even though the current *Ceremonial of Bishops* does not mention this act, it does so in its dispositions relative to the particular councils, as it formerly did; but the drafted canons cannot be promulgated without having been reviewed by the Holy See. Since the law is established when it is published (c. 7), the conciliar canons do not acquire legal force without the prior *recognitio* of the Apostolic See. Even if they were to be published beforehand, we would be looking at a leak of texts lacking in legal force that promulgation confers on them.

In conformance with the provisions of canon 8 § 2, canon 446 states that "the council has the responsibility of defining the manner in which the decrees will be promulgated and the time when the promulgated decrees will begin to oblige."

CAPUT IV
De Episcoporum Conferentiis

CHAPTER IV
Conferences of Bishops

447 **Episcoporum conferentia, institutum quidem permanens, est coetus Episcoporum alicuius nationis vel certi territorii, munera quaedam pastoralia coniunctim pro christifidelibus sui territorii exercentium, ad maius bonum provehendum, quod hominibus praebet Ecclesia, praesertim per apostolatus formas et rationes temporis et loci adiunctis apte accommodatas, ad normam iuris.**

The Bishops' conference, a permanent institution, is the assembly of the bishops of a country or of a certain territory, exercising together certain pastoral offices for Christ's faithful of that territory. By forms and means of apostolate suited to the circumstances of time and place, it is to promote, in accordance with the law, that greater good which the Church offers to mankind.

SOURCES: *LG* 23; *CD* 3, 37, 38; *DPMB* 210

CROSS REFERENCES: c. 449 § 2

COMMENTARY
Giorgio Feliciani

It is opportune to remember that the origins of the bishops' conference go back to the middle of the last century when the secularization of public institutions and the growing socialization of life demonstrated the need for systematic consultations among bishops belonging to the same country in accordance with the realization of common initiatives intended to face the new exigencies of evangelization. In the following one hundred years the bishops' conferences—at first by the spontaneous initiative of

some episcopates, and later with the decided support of the Holy See—dispersed and developed in such a way that made an appropriate regulation by universal law indispensable.[1] Vatican II, on facing the problem, was not limited just to taking note of the preexisting reality, but it profoundly influenced the physiognomy of the institution. The *Christus Dominus* transformed the Conferences from chance meetings, as one might say, into instances framed in the constitutional law of the Church; from voluntary assemblies into obligatory meetings inasmuch as they included summons and participation; from meetings heterogeneous in configuration and composition, into institutions essentially homogeneous; from organizations endowed exclusively with moral authority, into colleges capable of assuming juridically binding decisions.[2]

The concept of the bishops' conference as proposed by canon 447 repeats almost word-for-word the corresponding conciliar text (cf. *CD* 38, 1), but with some significant variations. First of all, it underlines the character of "permanence" of the Conferences, which distinguishes them from other institutions of a particular synodal character, like the provincial and plenary councils (cf. cc. 439–446). In effect, the Conferences not only meet periodically and frequently, but they are also endowed of permanent organizations to assure a stable coordination of pastoral activities[3] (*CD* 38.1), and they have juridical personality *ipso iure* (cf. c. 449 § 2).

One much more relevant innovation consists in the fact that while, according to the Council, the bishops in the Conferences "jointly exercise their pastoral ministry," the Code expressly limits that joint exercise to "certain pastoral functions," without, moreover, specifying them.

Such limitation is evidently intended to stress that, inasmuch as the exercise of the pastoral ministry on the part of a diocesan bishop is "strictly personal" rather than "collegial," its joint exercise can only refer to those areas which require cooperation among pastors to meet adequately the demands of the time.[4] As John Paul II has observed, in the contemporary world pastoral action must frequently confront problems that affect an entire nation which requires appropriate study and guidance to lead the faithful opportunely, while avoiding confusion and division. Therefore, there is a need for an organization in which the bishops can compare their observations and experiences, pool their common resources, and design programs to face the challenges and urgent problems of the Church and society. From this point of view, the Conferences have

1. For more information regarding the origin and development of the Bishops' Conferences, cf.G. FELICIANI, *Le conferenze episcopali* (Bologna 1974), pp. 15–349.

2. Cf. J. MANZANARES, "Las conferencias episcopales en el nuevo código de derecho canónico," in *Raccolta di scritti in onore di Pio Fedele*, I (Perugia 1984), pp. 513–514.

3. The directive Notes of the *MR*, of the SCRSI and of the SCB, recognize in the Bishops' Conferences one of the "principal operative centers" for the coordination of pastoral activity (n. 20).

4. Cf. mp *Apostolos suos*, nos. 10 and 15.

developed as an efficacious and practically indispensable instrument of guaranteeing the necessary unity of action.[1]

At the same time, the concept of the bishops' conference is overly ambiguous and general in canon 447, in terms of its theological-juridical nature. The *Motu proprio Apostolos suos*, of May 21, 1998, was promulgated precisely to address this inadequacy of canon 447. On the one hand, number 12 of *Apostols suos* acknowledged that "when the bishops of a territory jointly exercise certain pastoral functions for the good of their faithful, such joint exercise of the episcopal ministry is a concrete application of collegial spirit." On the other hand, it was careful to specify that this "exercise of the episcopal ministry never takes on the collegial nature proper to the actions of the order of bishops as such, which alone holds the supreme power over all the Church," because "episcopal collegiality in the strict and proper sense belongs only to the entire College of Bishops, which as a theological subject is individisible."

1. Cf. the numerous discourses cited by G. FELICIANI, "Le conferenze episcopali nel magistero di Giovanni Paolo II," in *Scritti in memoria de Pietro Gismondi*, I (Milan 1987), pp. 672–675.

448 **§ 1. Episcoporum conferentia regula generali comprehendit praesules omnium Ecclesiarum particularum eiusdem nationis, ad normam can. 450.**

§ 2. Si vero, de iudicio Apostolicae Sedis, auditis quorum interest Episcopis dioecesanis, personarum aut rerum adiuncta id suadeant, Episcoporum conferentia erigi potest pro territorio minoris aut maioris amplitudinis, ita ut vel tantum comprehendat Episcopus aliquarum Ecclesiarum particularium in certo territorio constitutarum vel praesules Ecclesiarum particularium in diversis nationibus exstantium; eiusdem Apostolicae Sedis est pro earundem singulis peculiares normas statuere.

§ 1. As a general rule, the Bishops' conference includes those who preside over all the particular churches of the same country, in accordance with can. 450.

§ 2. An Bishops' conference can, however, be established for a territory of greater or less extent if the Apostolic See, after consultation with the diocesan bishops concerned, judges that circumstances suggest this. Such a Conference would include only the bishops of some particular churches in a certain territory, or those who preside over particular churches in different countries. It is for the Apostolic See to lay down special norms for each case.

SOURCES: § 1: *CD* 38, 1
§ 2: SCPF Resp., 26 feb. 1964; *CD* 38, 5; *ES* I, 41 §§ 3 et 4; *DPMB* 211

CROSS REFERENCES: —

COMMENTARY

Giorgio Feliciani

The formula adopted by § 1 clearly indicates that this canon is proposed exclusively to delimit the composition of the Conferences, and it does not try at all to allude to the institution of ecclesiastical circumscriptions composed by the territories subject to the authority of the bishops who make up the Conferences. At one of the earliest moments, the codifying commission had been guided in that sense, envisioning the establishment, in the entire universal Church, of ecclesiastical regions that would

encompass, as a general rule, all the ecclesiastical provinces existing in the same country, endowed *ipso iure* of juridical personality and subject to the authority of the bishops' conference. This orientation was abandoned since, on one hand, it scarcely seemed to correspond to the conciliar mandate, and on the other, besides excessively limiting the autonomy of each diocese, it would have been able "to foster exaggerated nationalistic attitudes in the Church."[1]

The Council and its norms of application refused to determine the scope of the Conferences, and was limited to envisioning some cautions for those that would gather together bishops form different countries.

On the other hand, it was undeniable that the *Christus Dominus* showed a clear preference for national Conferences, from the fact that it repeatedly mentioned them and judged their experience as positive. The Code accents this preference to the point of establishing a juridical norm: according to the "general rule" stated in canon 448 § 1, the Conference must encompass only and all the bishops of the same nation. As a logical consequence, the same canon, in the following paragraph, extends the restrictions that were already in effect for international Conferences to those of an international character, since in both cases we find ourselves faced with an exception to the general rule. Judgment over the advisability of the constitution of Conferences of those ranges is reserved because the Holy See will consult the interested diocesan bishops and will establish specific norms for each one of the Conferences.[2]

Note that the term "nation" is clearly used here, as in canon 3, to designate political communities, not ethnic groups, to which a specific territory does not necessarily correspond. And this interpretation is confirmed in a manner absolutely evident by the configuration that the bishops' conferences have concretely and specifically assumed.

Therefore, the innovation introduced by the Code is fully in line both with the indications that emerge from the historical evolution of this institution and the exigencies of evangelization in the modern world. Nevertheless, one would have to ask if this formalization of the principle of nationality—and, therefore, of the principle of respect for the boundaries of each nation—would not make it more difficult for the Church, especially in countries that are especially jealous of their unity and independence, to resort to different solutions where they might seem opportune or necessary.

In effect, the institution of the national Conference is not always exempt from problems, since, because of the extremely diverse extension of the nation's territories, the scarce homogeneity in the criteria followed for establishing dioceses, and the different consistency in the presence of

1. Cf. *Comm.* 12 (1980), pp. 246ff.
2. Cf. mp *Apostolos suos*, no. 16.

Catholics in different countries, it could turn out not to be appropriate to meet pastoral demands.

In the large conferences, the bishops find it impossible to meet easily and frequently; and, in any case, they do not have room to expound their own experiences and opinions in a broad manner, or to verify them in a profound dialogue with their colleagues. Some statutes perceive these deficiencies well and try to obviate them by periodic infranational, provincial, or regional meetings. These meetings, no doubt, are useful, but since they do not have the competences proper to the plenary assembly, they do not resolve the problem and present, in turn, their own problems. Besides posing a subsequent waste of time and energy on the part of the bishops, they can foster the constitution of episcopal oligarchies when their presidents are attributed specific functions in the national Conference, as is envisioned by some statutes.

The easiest problem to solve seems, in principle, to be the problem of the countries that have an excessively reduced number of bishops. They can be united with a Conference of a neighboring country[3] or else be gathered into, together with the episcopates of bordering countries, one international Conference.

In fact, the Holy See and the episcopates themselves are not at all willing to give up the institution of a one and only national Conference. The number of international Conferences is very low, and the number of infranational Conferences is lower still. All this now, together with the Conferences composed of hundreds of bishops, leads to the existence of several more that include no more that three or four prelates.

3. Expressly provided for in *ES*, I, no. 41 § 3.

449 **§ 1. Unius supremae Ecclesiae auctoritatis est, auditis quorum interest Episcopis, Episcoporum conferentias erigere, supprimere aut innovare.**

§ 2. Episcoporum conferentia legitime erecta ipso iure personalitate iuridica gaudet.

§ 1. It is for the supreme authority of the Church alone, after consultation with the bishops concerned, to establish, suppress, or alter Bishops' conferences.

§ 2. An Bishops' conference lawfully established has juridical personality by virtue of the law itself.

SOURCES: § 1: *CD* 38, 5
§ 2: c. 100 § 1

CROSS REFERENCES: —

COMMENTARY

Giorgio Feliciani

1. *Erection, suppression, and modification of bishops' conferences*

Paragraph 1 of this canon attributes to the Holy See exclusive competence over the erection, suppression, and modification of Bishop's Conferences. That reservation is not expressly envisioned by the conciliar sources, but, in the present system of the powers within the Church, it is justified by the importance that this institution assumes in the life of the particular churches and of the universal Church itself, decidedly superior to the importance of the ecclesiastical provinces for which an analogous provision is in effect (cf. c. 431 § 3). On the other hand, no other solution was specifically possible. On one side, to leave these decisions to the interested bishops would have presented grave problems in case of there not being unanimous agreement; on the other side, no ecclesiastical authority outside the Holy See could have power to resolve the possible divergences.

Moreover, it is expressly established that before adopting the pertinent measures—which correspond, within the scope of their respective competences, to the congregations for the Eastern churches, for the bish-

ops, and for the evangelization of the peoples[1]—the Holy See must consult with the interested bishops. It is a provision dictated more for reasons of opportunity, for those considerations of ecclesiological character that, after Vatican II, have established a notable increase in the forms of organic collaboration between the Holy See and the episcopate (cf. commentary on c. 456).

2. *Juridical personality*

Vatican II and its norms of application have not concerned themselves with the issue of juridical personality, and this legislative silence has led to the most varied of doctrinal interpretations. Some considered the Conferences lacking in that prerogative; others opined that they were endowed of such personalities ipso iure; others, finally, thought that they could acquire juridical personality *"per formale decretum"* (cf. c. 114 § 1).[2]

The Code, by adhering to the votes formulated by diverse parties, puts an end to the dispute in the best way, by providing in § 2 of this canon that a lawfully established Conference, within the meaning of § 1, has a juridical personality by law—a personality that, in light of the provisions of canon 116 § 1, must be considered, no doubt, to be public nature.

This explicit recognition by the canonical legislator can provide in many cases a notable facility in obtaining recognition for civil purposes, according to the procedures envisioned by the legal systems of the different states. It must be observed, moreover, that that recognition is already expressly sanctioned by the agreements stipulated between the Holy See and certain nations.[3]

1. Cf. *PB*, arts. 58 § 1, 82, 89.
2. For more information regarding this issue, cf. J. MANZANARES, "De Conferentiis Episcopalibus post decem annos a Concilio Vaticano II," in *Periodica de re morali, canonica, liturgica* 54 (1975), pp. 611–618.
3. Cf. *Acuerdo entre la Santa Sede y el Estado Español sobre asuntos jurídicos*, January 3, 1979, art. I, no. 3, in *AAS* 72 (1980), p. 30; and *Norme circa gli enti e beni ecclesiastici in Italia*, June 3, 1985, art. 13, in *AAS* 77 (1985), p. 551.

450 **§ 1. Ad Episcoporum conferentiam ipso iure pertinent omnes in territorio Episcopi dioecesani eisque iure aequiparati, itemque Episcopi coadiutores, Episcopi auxiliares atque ceteri Episcopi titulares peculiari munere, sibi ab Apostolica Sede vel ab Episcoporum conferentia demandato, in eodem territorio fungentes; invitari quoque possunt Ordinarii alterius ritus, ita tamen ut votum tantum consultivum habeant, nisi Episcoporum conferentiae statuta aliud decernant.**

§ 2. Ceteri Episcopi titulares necnon Legatus Romani Pontificis non sunt de iure membra Episcoporum conferentiae.

§ 1. By virtue of the law, the following persons in the territory belong to the Bishops' conference: all diocesan bishops and those equivalent to them in law; all coadjutor bishops, auxiliary bishops and other titular bishops who exercise in the territory a special office assigned to them by the Apostolic See or by the Bishops' conference. Ordinaries of another rite may be invited, but have only a consultative vote, unless the statutes of the Bishops' conference decree otherwise. See, after consultation with the diocesan bishops concerned, judges that circumstances suggest

§ 2. The other titular bishops and the Legate of the Roman Pontiff are not by law members of the Bishops' conference.

SOURCES: § 1: *CD* 38, 2; PCIDSVC Resp., 31 oct. 1970 (*AAS* 62 [1970] 793)
§ 2: *CD* 38, 2; *SOE* VII, 2

CROSS REFERENCES: —

COMMENTARY

Giorgio Feliciani

1. *Composition*

The condition of members by the law itself is recognized first in all the diocesan bishops and all those who are juridically equivalent to them, namely, prelates heading ecclesial communities equivalent to dioceses according to canon 368 (cf. c. 381 § 2). According to the provisions of the Code, this deals with the abbots and territorial prelates and vicars, pre-

fects and apostolic administrators (cf. cc. 370–371). Afterwards, the Apostolic Constitution *Spirituali militum curae* (II § 1 and III) expressly added the military ordinaries to the list. When a see is vacant, the right of participation falls to the diocesan administrator since canon 427 § 1 affords him, in principle, the rights and duties proper to a diocesan bishop.

Besides the diocesan bishops and the prelates equivalent to them, the membership by law falls also to the coadjutor bishops, who, as is well known, have the right of succession (cf. c. 403 § 3), to the auxiliary bishops, and to the other bishops who exercise in the territory a "*peculiare munus*" by order of the Holy See or the bishops' conference. That "*munus*" can be of very different natures, but since the norm states a participation by law in a permanent organization, it must have a character of stability. In contrast, it was argued if it should necessarily affect the entire territory of the Conference, or if it should refer to only a part of it. In reality in this terrain the Council preferred to leave a certain margin of discretion to the different episcopates, which, in fact, have adopted various solutions in their statutes.

Paragraph 2 expressly excludes from the number of members by law the pontifical legate and all remaining titular bishops. However, as far as the bishops emeriti are concerned (cf. c. 402 § 1), mp *Apostolos suos* considered it appropriate that the statutes allow for their "presence" with a consultative vote, and recommended that "particular care should be taken to enable them to take part in some study commissions, when these deal with issues in which a bishop emeritus is particularly competent." Moreover, the PCILT, in its response of July 2, 1991, specified that the bishops emeriti can be elected by the Conference as members of the ordinary general assemblies of the Synod of Bishops (cf. c. 346 § 1).[1]

Regarding the pontifical legate—whom canon 364, 3° obliges to maintain intense relations with the Conference, offering it all possible help—the mp *Sollicitudo omnium Ecclesiarum*, VIII, number 2 obliges him to be present at the initial session of each general assembly, reserving in any case the possibility of his participation in other acts of the Conference at the invitation of the Conference or by mandate of the Holy See. It requires, moreover, that he be informed in a timely manner of the agenda of each assembly and that he receive a copy of the corresponding acts.

It is somewhat difficult to specify in a totally clear and unequivocal way the title-holder for participation in the Conferences. In effect, all the provisions of canon 450 faithfully reproduce the provisions of the Council (cf. *CD* 38, 2) that searched for a compromise among many opposing positions, which favored, respectively, the rank derived from episcopal ordination and authority of the prelates heading the particular churches.

1. Cf. *Comm.* 23 (1991), p. 140.

The doctrine of collegiality, no doubt, exercises its influence, since the "peculiare munus" implies the title of participation only when it is exercised by a consecrated bishop. Nevertheless, episcopal ordination is not the only relevant factor, since, on one hand, it must be accompanied by at least the fact of being the head of a "peculiare munus" and, on the other, it is not required for the prelates equivalent to diocesan bishops.

It can be affirmed, therefore, that the right of participation is based on the fact of heading a specific *munus* of an episcopal character according to the particular churches represented at the Conference, such as is implicitly, but clearly, affirmed in the definition itself of Conference (cf. c. 447) described as an organization in which the bishops jointly exercise functions of a pastoral nature.

These conclusions are confirmed by the response of the PCIDSVC of October 31, 1970.[2] There, it was affirmed, in effect, that the Conferences, since they are episcopal organizations, must be composed exclusively of bishops and prelates juridically equivalent to them; and, at the same time, it is specified that priests, religious, and lay faithful can participate in the assemblies, but only in the capacity of guests to examine certain issues and with an exclusively consultative vote.[3] Thus, the value of "competent collaboration that, in various sectors, is rendered to the bishops, in the heart of the bishops' conference, by priests, lay faithful, and religious, both men and women" is implicitly recognized.[4] Such collaboration assumes particular importance for religious since canon 708 contemplates that the conferences of their major superiors will establish opportune forms of coordination and cooperation with the bishops' conferences.[5]

2. *Participation of bishops of the Eastern Rite*

From all conciliar texts it is clear that the institution of the Conferences essentially effects the Latin Church, since in the Eastern Catholic Churches their functions are generally performed by the patriarchal synods and other analogous collegial organizations.[6] Nevertheless, Vatican II (cf. *CD* 38,2) clearly and coherently refused to affirm this principle, and with the purpose of promoting the organizational collaboration of the

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2. *AS* 72 (1970), p. 793.
3. Cf. also the letter sent to the Presidents of the bishops' conferences by the CpE, also in the name of the CGE, *La Congregazione per i Vescovi*, 21.VI.1999, in *AAS* 91 (1999), pp. 996–999. Number 12 therein provides that those who "are not members of the Conference could, as an exception and in special cases, participate in some sessions of the plenary Assembly of the Conference or its Commissions only with a consultative vote."
4. JOHN PAUL II, *Ai vescovi del Brasile*, July 10, 1980, nos. 4–5, in *Insegnamenti di Giovanni Paolo II*, ff, III, 2 (Vatican City 1979), pp. 220 and 224.
5. Cf. *MR*, 63–65.
6. Cf. *CCEO*, cc. 102–113, 140–145, 164–172.

bishops of Latin Rite, predominant in a certain territory, with the hierarchies of the minority rituals existing within it, provided that they should participate with equal rights in the bishops' conferences of any rite.

This provision caused much confusion. It was observed that many of the decisions about the competence of the Conferences referred exclusively to the Latin Church (as, for example, those relative to the liturgy) and were not understood, therefore, as enabling the Eastern bishops to contribute with their vote to the assumptions of decisions that did not concern them. Regarding the subjects of common interest, it was emphasized that the submission of the prelates of minority rituals or the decisions of assemblies composed mostly of bishops of a different rite could be damaging to the lawful autonomy of their Churches.

Therefore, the provision of canon 450 turned out to be appropriate, which, on the one hand, limits the participation by law of the prelates of Latin Rite, and on the other, expressly agrees that the Eastern prelates are invited but only with a consultative vote.

For the rest, the norm is not formulated in an absolute way, but conditioned by the absence of specific provisions on the statutes of the Conference. In effect, the legislator has not wanted to exclude categorically all possibility of resorting to different solutions due to the great variety of situations that can present themselves since, next to countries with minorities of little importance from the numerical point of view (e.g., Italy), others exist in which these assume a notable amount (e.g., India and Canada), and others in which there exists a simultaneous presence of diverse Catholic rites (e.g., the Middle East).

It is not specified if the statutes can be separated from the general norm only in order to attribute a deliberative vote to the Eastern bishops or also to exclude them from any form of participation. Nevertheless, it seems more reasonable to think that only the first case is proper, which has already found specific application in the statutes of the Bishops' Conference of Italy of 1985.[7]

Last, it must be remembered that the organizational collaboration of the Latin bishops with the prelates of another rite can be assured also by different ways of participation by the latter in the bishops' conferences, in particular through the "periodici conventus" foreseen by canon 322 § 1 of the *Codex canonum Ecclesiarum orientalium*, 1990, which specifies and develops an instruction already contained in *Christus Dominus* 38, 6.

7. Cf. *Enchiridion della Conferenza Episcopale Italiana*, III (Bologna 1986), p. 1328

451 **Quaelibet Episcoporum conferentia sua conficiat statuta, ab Apostolica Sede recognoscenda, in quibus, praeter alia, ordinentur conferentiae conventus plenarii habendi, et provideantur consilium Episcoporum permanens et secretaria generalis conferentiae fini consequendo efficacius consulant.**

Each Bishops' conference is to draw up its own statutes, to be reviewed by the Apostolic See. In these, among other things, arrangements for the plenary meetings of the Conference are to be set out, and provision is to be made for a permanent committee of bishops, and a general secretariat of the Conference, and for other offices and commissions by which, in the judgement of the Conference, its purpose can more effectively be achieved.

SOURCES: *CD* 38, 3; *ES* I, 41 §§ 1 et 2; *DPMB* 211

CROSS REFERENCES: —

COMMENTARY

Giorgio Feliciani

1. *The statutes*

The Council and, following in its tracks, the Code, have not wanted to regulate exhaustively the institution of the Conferences and have limited themselves to establishing a few essential principles. This was a realistic option, which stemmed from the statement of the impossibility of regulating in an absolutely homogeneous way the realities that were presented in various countries with notably diverse characteristics regarding origin and traditions, number of participants, pastoral exigencies, and relations with the civil authorities.

From that it follows that each Conference, to be able to function specifically and to perform its own attributions, is in need of more specific norms that, while respecting the universal law, determine, among other things, the methods of convening and developing the plenary assembly, providing for all the organizations necessary or useful for the life of the Conference itself, without forgetting to provide for financial needs.

The Code, in conformance with what the Council had established (cf. *CD* 38, 3) and owing to the directive principle of leaving broad autonomy to the particular regulations, entrusted the drafting and publication

of those statutory provisions to each one of the Conferences, while reserving to the Holy See only the *recognitio* of the provisions adopted in that respect (for that formula of control, see commentary on c. 455 § 2).

The statutes of the Conferences have a juridical nature of "ordinationes" referring to "universitates personarum" and, therefore, are the responsibility of each bishop (cf. c. 94).[1] From the moment they were considered as institutions belonging to the hierarchical constitution of the Church and were dictated by virtue of a power attributed to the Supreme Authority, they had to be considered as having legislative power.

Therefore, actions must be approved, as several statutes expressly provide, by a two-thirds majority, pursuant to canon 455 § 2 for general normative acts, with the statement afterwards that the quorum is counted exclusively from the members of the Conference that have a deliberative vote by universal law (cf. c. 454).

For an assessment of the statutory output of the various Conferences, one should recall that, in light of the investigations carried out up to now, it is possible to observe a notable originality on the European continent, with differences, and even anomalies, deserving of close attention,[2] while the episcopates of other continents seem to display a lesser degree of creativity.[3] Anyway, it must be observed that in this field the Conferences cannot be limited, certainly, to a mechanical repetition of the provisions of universal law, of the *Archetypon statui* prepared by the Holy See,[4] but care must be taken also against an excessive multiplication of norms that would eventually encourage it to become bureaucratized.

Finally, it should be noted that, pursuant to no. 4 of the Complementary Norms contained in mp *Apostolos suos*, the bishops' conferences are required to review their statutes "in order that they may be consistent with the clarifications and norms of the present document as well as the Code of Canon of Law." Subsequently, the CB (also on behalf of the CEP) gave precise directions in this respect.[5]

2. *The permanent bodies of bishops' conferences*

The plenary assembly is in no position to assure directly and completely the common continuous action required by the institutional end of

1. The Directory *DPMB*, no. 211, b), emphasizes the responsibility of the Bishop to observe the statutes faithfully and to accept promptly the duties derived from them.
2. This was affirmed by Mons. M. Costalunga, at the time subsecretary of the SCB, in the Prologue to R. ASTORRI, *Gli statuti delle conferenze episcopali*, I. *Europa* (Padova 1987), p. XIII.
3. Cf. I. IBAN, *Gli statuti delle conferenze episcopali*, II. *América* (Padova 1989), p. 54.
4. Published by M. COSTALUNGA, "De episcoporum conferentiis," in *Periodica de re morali, canonica, liturgica* 49 (1968), pp. 277–280.
5. Cf. Litt. *La Congregazione per i Vescovi*

the Conferences. In effect, this assembly is constituted only for a few days a year, since the bishops cannot remain far from their dioceses for too long a time.

Consequently, canon 451 imposes on every Conference the obligation of providing in the statutes of the institution for a permanent episcopal committee, a secretary-general, and, moreover, all of the offices or commissions that might be useful or necessary.

The Code, following the Council, wanted to limit itself to this vague and generic direction to respect the various needs of the different episcopates, which adopted the most disparate solutions. Thus, in some countries there is a complete lack of offices and commissions, and in the various statutes the attributions of the permanent bodies are not identical. On the other hand, it should be emphasized that, in singular contrast to this orientation, the institution of the permanent committee is obligatory, even though the smaller episcopates may not see its necessity.

The lack of a common discipline makes a common orientation difficult in matters connected to the institution of the permanent bodies; these matters, nevertheless, are necessary to confront critically, especially because of the relation of the permanent bodies to the plenary assembly.

Regarding the principles, the terms of this relation are extremely clear since not only do the Council and Code assign a well-defined subordinate role to the permanent bodies, but moreover all the statutes expressly affirm the supremacy of the assembly (cf. commentary on c. 453). Nevertheless, grave problems can come up in practice. In effect, it is evident that when the assemblies are very numerous, the bodies responsible for the formulation of the agenda, instructions, and the presentation of the various themes, and for the management of the meeting, exercise a notable influence over the orientation and the development of the debate, as well as over the respective conclusions.

The mp *Apostolos suos* also contains an admonition to "avoid the bureaucratization of the offices and the commissions acting in plenary meetings," noting "the essential fact that the Bishops' conferences with their commissions and offices exist to help the bishops and not to replace them."[6]

In order to counteract the proliferation of bureaucracies and oligarchies that would end up limiting the actual joint responsibility of the entire episcopate in conducting the life of the Conference, it is absolutely necessary that the functions of the permanent bodies be limited as much

6. MP *Apostolos suos*, no. 18. This is further affirmed in the letter *La Congregazione per i Vescovi*, no. 8, which "recommends against reproducing at the Conference level, the organization established by the universal legislation for the curias and the diocesan organs, where all the members of the people of god, taking into account their ecclesial status, can and should cooperate in fulfilling the mission of the Church."

as possible by the statutory provisions, so that the plenary assembly can always direct and control their activity. Nevertheless, this condition is not easily accomplished in Conferences where the need to defend the prerogatives of the assembly—which can be convened neither rapidly nor frequently—collides with the need to assure adequately all the required services for united action in a large episcopate, and of permitting an opportune taking of positions on urgent matters that could possibly be put forth.

In these situations the most efficacious guarantee against the constitution of episcopal oligarchies is constituted by the election of the bishops responsible for permanent functions for a certain time by the plenary assembly, by which, in this manner, the freedom of bishops of confirming or revoking their confidence in them is reserved. And from this point of view it is a shame that the Code expressly contemplates election only for the appointment of the president and secretary-general, without specifying that such an appointment must be done for a certain time (cf. c. 452 § 1).

In contrast to what occurs in the case of the permanent council (c. 457) and the general secretariat (c. 458), the commissions are not the object of any specific provision.

From an examination of the statutory norms, it turns out that, while the permanent council and the general secretariat represent a relatively homogeneous structure in each country and perform functions that affect, although at different levels, the entire life of the Conference, the commissions have specific competences, and are organized in very different ways, dictated both by the nature of the functions that are entrusted to them and by the characteristics of the different episcopates. In particular, only the largest Conferences are endowed with genuine and proper episcopal commissions, since in those constituted by few members those organizations are made up of priests, religious, and lay faithful that conduct their activity presided over by a bishop.[7] Within the scope of the Conference itself it is necessary, moreover, to distinguish the commissions recommended or prescribed by norms of universal law (like the commission for doctrine, the best distribution of clergy and missions),[8] from those freely instituted by the Conference itself for a more efficacious development of its functions, and that can even have a merely temporal character.

7. According to the letter *La Congregatione per i Vescovi*, no. 9, in order for commissions to be denominated as "episcopal," they must consist of Bishops and juridically equivalent Prelates. When the number of the members of the Conferences is "insufficient to establish those commissions, other organs may be provided (consultors, councils...), presided over by a Bishop and consisting of presbyters, consecrated persons, laypersons," which may not under any circumstances be called "episcopal."

8. Cf. SCDF, Instr. *Litteris apostolicis*, February 23, 1967, in *Enchiridion Vaticanum*, II (Bologna 1966ff), pp. 824–827; *SCCong*, Directive Notes, *Postquam Apostoli*, March 25, 1980, no. 18, in *AAS* 72 (1980), p. 357.

In any case, the assembly reserves to itself the broadest powers over the commissions, while attributing to itself directly the functions of instituting them, suppressing them, approving their programs, and controlling their activity. Its supremacy would be, thus, appropriately assured; but after close analysis, the reality in not a few countries is very different, to the point of making one think that, among the various permanent bodies, the commissions are precisely the ones that present the gravest problems.

In effect, in some statutes, their competences are indicated in very broad and generic terms, and include the management of the organizations—like departments, offices, and national services—that can profoundly influence the religious life of a country, while stating the ordinary exercise of the episcopal ministry itself. And in that regard we must emphasize that, while the functions of the permanent council mostly refer to the internal life of the Conference, the activity of the commissions affects, often directly, the specific development of pastoral action, as is evident even in its denominations.

On the other hand, the episcopates on occasion have shown themselves to have a tendency to leave these organizations a radius of action so wide, that the bishops have renounced the direct exercise of the certain responsibilities to entrust them to certain prelates considered especially worthy of trust on account of their specific competency. This is a tendency specifically rejected by the organizations entrusted with the official interpretation of the conciliar decrees, which, in two different responses, have expressly excluded the commissions from being able to exercise legislative functions.[9]

This tendency reveals a conception of the bishops' conference more as an instrument to guarantee the efficaciousness of the ecclesiastical structures at a national level, than as a place of joint exercise of the episcopal ministry in a context of effective co-responsibility. Such a conception can favor, through the system of delegation, a fragmentation of the episcopal ministry that casts a shadow over its sacramental character and its united nature. It is, thus, opportune, that in all parts of the world the tasks of the commissions be strictly delimited, so that the function of service in relation to the episcopate is accented with the eventual responsibility for the management of determined sectors of religious life and pastoral activity which develops in a country.

9. Cf. Central Commission for the coordination of postconciliar works, Resp. *Utrum potestas*, June 10, 1966, in *AAS* 60 (1968), p. 361; PCIDSVC, Resp. *Utrum potestas*, October 21, 1979, in *AAS* 72 (1980), p. 106. For the legislative power of the Conferences, cf. c. 455.

452 **§ 1. Quaelibet Episcoporum conferentia sibi eligat praesidem, determinet quisnam, praeside legitime impedito, munere pro-praesidis fungatur, atque secretarium generalem designet, ad normam statutorum.**

§ 2. Praeses conferentiae, atque eo legitime impedito pro-praeses, non tantum Episcoporum conferentiae conventibus generalibus, sed etiam consilio permanenti praeest.

§ 1. Each Bishops' conference is, in accordance with the statutes, to elect its president, and to determine who, in the lawful absence of the president, will exercise the function of the pro-president, and to designate a general secretary.

§ 2. The president of the Conference or, when he is lawfully impeded, the pro-president, presides not only over the general meetings of the Bishops' conference but also over the permanent committee.

SOURCES: —

CROSS REFERENCES: —

COMMENTARY

Giorgio Feliciani

Before all else, the present canon envisions that the office of president is to be elective; but such a principle, though formulated in absolute terms, suffers from several instances of being repealed, even in the statutes approved after the promulgation of the new Code. In effect, in Italy the Pontiff appoints the president; and in Belgium (where the Conference gathers together the bishops of a single ecclesiastical province) the president by law is the metropolitan of the province.

Regarding the functions of the president, the Code in this chapter is limited to establishing that he presides over both the meetings of the permanent council and plenary assemblies, and provides for the opportune transmittal of the acts approved in the course of these activities to the Holy See (cf. c. 456). Likewise, the statutes do not devote, in general, much attention to this subject, being more concerned with the discipline of the procedures of election and specifying the tasks of the president in relation to the assembly and permanent council.

Nevertheless—as the president of the PCILT has emphasized[1]—this office assumes a notable importance in the life of the Conference, since it establishes, among other things, the Conference's representation, the sensitive responsibility to resolve matters where there is an impasse due to parity in votes obtained on two opposing opinions (cf. c. 119, 2°), and participation by law in the extraordinary general assemblies of the Synod of Bishops.[2]

These considerations led the CPI to conclude that the functions of president and vice-president cannot be entrusted to an auxiliary bishop and therefore are reserved for the members *pleno iure* of the Conference, that is, for those who have a deliberative vote by universal law (cf. c. 454).[3] In this regard, the letter *La Congregazione per i Vescovi*, number 7, found it necessary to specify that, "when the president and the vice-president ... cease in the office of diocesan bishop, they also cease as president and vice-president of the conference."

The present canon requires also that the secretary-general be elected. For this office, cf. c. 458.

1. Cf. Card. CASTILLO LARA, *De episcoporum conferentiarum praesidentia*, in *Comm.* 21 (1989), pp. 94–98.
2. Cf. OS (1969), art. 5 § 2.
3. Cf. response *Utrum Episcopus Auxiliaris*, of May 23, 1988 (see *Appendices*, 2) and the mp *Apostolos suos*, no. 17.

453 **Conventus plenarii Episcoporum conferentiae habeantur semel saltem singulis annis, et praetera quoties id postulent peculiaria adiuncta, secundum statutorum praescripta.**

Plenary meetings of the Bishops' conference are to be held at least once a year, and moreover as often as special circumstances require, in accordance with the provisions of the statutes.

SOURCES: —

CROSS REFERENCES: —

COMMENTARY

Giorgio Feliciani

The Council, on declaring it useful that "in all parts of the world the bishops of each country or region would meet regularly" (*CD* 37), mentions the plenary assembly in the same description of the Conference. In effect, its function is so essential for the life of this institution that the statutes of the various Conferences, with different terminology but with absolute unanimity of thought, recognized the plenary assembly as the supreme, principal, and ordinary body, that has all the powers and all the faculties and that, in the ultimate analysis, is identified with the Conference itself.

Therefore, it is easily understood that not only the Code, but also the statues refuse to fix its competences in a detailed and exhaustive manner, limiting itself to mentioning the most important functions, like the issuing of documents in the name of the entire episcopate, approval of national pastoral plans, or election of the members of the permanent organs.

So that the Conference can realize its institutional ends, the plenary assembly requires that it be convened not only periodically, as is expressly envisioned by the Council, but with some frequency. Consequently, the Code establishes that the bishops must meet at least once a year, and, moreover, if special circumstances warrant it, according to the procedures envisioned by the statutes for the convening of extraordinary assemblies.

Note that, regarding the frequency of the meetings, there are various factors that condition its utility—thus, the importance of common problems and the availability of the bishops for effective collaboration—as well as the facility of its being convened. The process of convening a meeting, especially in the very large Conferences, can become hindered

by the inevitable complexity of organization, by the size of the territory and difficulties in communication.

Universal law deals with the procedure of the assemblies solely with respect to juridically binding decisions and doctrinal declarations (cf. commentary on c. 455). Consequently, regarding those deliberations of a different nature which are not otherwise provided for in specific statutes, the general norm of canon 119, 2° will apply, which requires the favorable vote of the absolute majority of those present who, in turn, must constitute the majority of those who have a right to vote.

454 § 1. **Suffragium deliberativum in conventibus plenariis Episcoporum conferentiae ipso iure competit Episcopis dioecesanis eisque qui iure ipsis aequiparantur, necnon Episcopis coadiutoribus.**

§ 2. **Episcopis auxiliaribus ceterisque Episcopis titularibus qui ad Episcoporum conferentiam pertinent, suffragium competit deliberativum aut consultivum, iuxta statutorum conferentiae praescripta; firmum tamen sit eis solis, de quibus in § 1, competere suffragium deliberativum, cum agitur de statutis conficiendis aut immutandis.**

§ 1. By virtue of the law diocesan bishops, those equivalent to them in law and coadjutor bishops have a deliberative vote in plenary meetings of the Bishops' conference.

§ 2. Auxiliary bishops and other titular bishops who belong to the Bishops' conference have a deliberative or consultative vote according to the provisions of the statutes of the Conference. Only those mentioned in § 1, however, have a deliberative vote in the making or changing of the statutes.

SOURCES: § 1: *CD* 38, 2
§ 2: *CD* 38, 2

CROSS REFERENCES: —

COMMENTARY

Giorgio Feliciani

The episcopal ministry specifically exercised not only constitutes a title to participation, but it also determines a "hierarchization" of the members to whom are granted rights differentiated according to diverse importance of their offices, such that the positions of the bishops who head dioceses and the ecclesial communities equivalent to them, as well as those of the coadjutors, are clearly favored.

In effect, the Code has followed the Council (cf. *CD* 38, 2) by reserving a deliberative vote to these bishops, leaving to the statutes the faculty of attributing a deliberative vote to other members of the Conference. The appropriateness of this attribution should be carefully assessed inasmuch as, under mp *Apostolos suos*, no. 17, "the proportion between diocesan bishops and auxiliary and other titular bishops should be taken into

account, in order that a possible majority of the latter may not condition the pastoral government of the diocesan bishops."

In any event, when it is a matter of approving or modifying the statutes, the deliberative vote remains, in any case, reserved, pursuant to canon 454 § 2, to those who have such vote by universal law (diocesan bishops, prelates equivalent to bishops, and coadjutors). This limitation is absolutely inevitable if it is considered that, as has already been noted, it is left precisely to the statutes to establish if the other members of the Conference should have a deliberative vote.

Regarding the specific problem of the position granted to the coadjutors (criticized by many council fathers) became understandable from the dual perspective of the assimilation of the local ordinaries and of the discrimination towards the auxiliaries, if one thinks about the innovations introduced by Vatican II in the regulations regarding the coadjutors and auxiliaries.

In effect, after Vatican II (cf. *CD* 25–26 and cc. 403–411), it can no longer be affirmed that, *sede plena*, these bishops have the same prerogatives, since the coadjutor not only has the right of succession, but he also participates in a more precise way in the responsibilities of the diocesan bishop, who must always appoint him vicar-general and consult him on matters of great importance. The argument, nevertheless, is not valid in the case of the auxiliary with special faculties envisioned in canon 403 § 2, and it is one of the reasons that lead to doubt about the opportune nature of the introduction of this figure which was desired by the legislator.

455 **§ 1. Episcoporum conferentia decreta generalia ferre tantummodo potest in causis, in quibus ius universale id praescripserit aut peculiare Apostolicae Sedis mandatum sive motu proprio sive ad petitionem ipsius conferentiae id statuerit.**

§ 2. Decreta de quibus in § 1, ut valide ferantur in plenario conventu, per duas saltem ex tribus partibus suffragiorum Praesulum, qui voto deliberativo fruentes ad conferentiam pertinent, proferri debent, atque vim obligandi non obtinent, nisi ab Apostolica Sede recognita, legitime promulgata fuerint.

§ 3. Modus promulgationis et tempus a quo decreta vim suam exserunt, ab ipsa Episcoporum conferentia determinantur.

§ 4. In casibus in quibus nec ius universale nec peculiare Apostolicae Sedis mandatum potestatem, de qua in § 1, Episcoporum conferentiae concessit, singuli Episcopi dioecesani competentia integra manet, nec conferentia eiusve praeses nomine omnium Episcoporum agere valet, nisi omnes et singuli Episcopi consensum dederint.

§ 1. The Bishops' conference can make general decrees only in cases where the universal law has so prescribed, or by special mandate of the Apostolic See, either on its own initiative or at the request of the Conference itself.

§ 2. For the decrees mentioned in § 1 validly to be enacted at a plenary meeting, they must receive at least two thirds of the votes of those who belong to the Conference with a deliberative vote. These decrees do not oblige until they have been reviewed by the Apostolic See and lawfully promulgated.

§ 3. The manner of promulgation and the time they come into force are determined by the Bishops' conference.

§ 4. In cases where neither the universal law nor a special mandate of the Apostolic See gives the Bishops' conference the power mentioned in § 1, the competence of each diocesan bishop remains intact. In such cases, neither the Conference nor its president can act in the name of all the bishops unless each and every bishop has given his consent.

SOURCES: § 1: *CD* 38, 4; PONTIFICIA COMMISSIO CENTRALIS COORDINADIS POST CONCILIUM LABORIBUS ET CONCILII DECRETIS INTERPRETANDIS, Resp., 10 iun. 1966 (*AAS* 60 [1968] 361); PCIDSVC Resp. I, 5 feb. 1968 (*AAS* 60 [1968] 361–362)
§ 2: *CD* 38, 4; *DPMB* 212
§ 4: c. 101 § 1,2°; *LG* 27; *CD* 38, 4; *DPMB* 212

CROSS REFERENCES: —

COMMENTARY

Giorgio Feliciani

1. *Normative powers of the Conference*

Paragraph 1 of this canon grants the Conference functions of a normative character, sanctioning its power to issue general decrees, both legislative (cf. c. 29) and executive (cf. cc. 31–33).[1]

The attribution of such power to the Conferences—which until then were absolutely lacking in power—encountered lively resistance in the conciliar hall because while some fathers denounced the danger of an excessive limitation on the autonomy of each bishop, others observed that the pontifical primacy itself was at stake. These two objections were not as far apart as it might have first appeared, since they aimed at the same result of excluding any intermediate instance between the Pontiff and the bishops heading the particular churches.

Faced with such a complex problem, the Council—and in its tracks the Code—adopted realistic and balanced solutions: on one hand, it sanctions the normative power of the Conferences, but on the other, it limited it to specific and singular subjects, established by universal law or by special mandates of the Holy See. Therefore, it implicitly recognized that a normative competence of a general character exercised by an organization of a permanent nature like the Conference would have been able to impose an unacceptable influence on the responsibility proper to each bishop. From there it follows that the legislation of the Conferences will necessarily have, in a manner of speaking, an episodic and fragmentary character. Otherwise, when the good of the Church in a certain country requires a more organic particular regulation, the interested Conference will

1. In effect, the CPI responded affirmatively to the question "Whether the expression 'general decrees' in c. 455 § 1, also includes general executory decrees of the sort in cc. 31–33." Cf. Resp. *Patres Pontificiae*, July 5, 1985, in *AAS* 77 (1985), p. 771.

always be able to ask the Holy See to approve the convening of a plenary council, pursuant to canons 439ff.

The classification of those powers attributed to the Conference is still a subject of much controversy. For some they are ordinary and proper, for others they are ordinary and vicarious, and for others they are even delegate, *ab homine* or also *a iure.*[2] This variety of opinions seems to be due more to considerations of a technical juridical nature than to persistent divergences regarding the theological state of these institutions.

It is not possible to develop here a chart of the multiple specific legislative competences attributed to the Conferences.[3] It can merely be reiterated that the postconciliar codification was intended to leave "an ample space of lawful autonomy ... for the particular churches, to which the power has been granted to legislate about many subjects that formerly were reserved to the Apostolic See."[4] The Conferences have been assigned, therefore, a role of first rank in putting the new codification into practice to the extent that it should be integrated and required according to the various demands of the times and places, according to the competences that are attributed to them by numerous canons scattered throughout the different books of the Code.[5]

Otherwise, those attributions are not particularly meaningful since in not a few cases the task of the Conferences is reduced to providing discipline for very specific and delimited subjects or to electing among alternatives that are already specifically defined by the Code itself.[6] In any case, they are not only less than some expected, but even less than the first draft of the codifying Commission. This is because while the work was progressing, many competences envisioned by the schemata that were sent to the consultative bodies between 1972 and 1977 disappeared, probably because of the prevalence of the concerns for protecting the autonomy of the particular churches.

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2. For an overview of the many theses, cf. J. FORNÉS, "Naturaleza sinodal de los Concilios particulares y de las Conferencias episcopales," in *La synodalité. Actes du VII congrès international de Droit canonique,* in *L'Année canonique* hors série, I (1992), pp. 340–346.

3. Cf. "listes indicatives" attached to Secr. St., Litt. *Certaines conférences,* November 8, 1983, in *Comm.* 15 (1983), pp. 137–139. Also cf. *Codex iuris canonici fontium annotatione et indice analytico-alphabetico auctus* (Vatican City 1989), pp. 552–553, entry "Conferentia Episcoporum - normas statuere potest."

4. Mons. R. CASTILLO LARA, Pro-President of the Commission on codification, expressed this opinion when the new Code was officially presented, in *Comm.* 15 (1983), p. 33.

5. For the directives issued by the Holy See in this regard, cf. Secr. St., Litt. *Certaines Conférences,* cit., pp. 135–136.

6. Cf. J. MANZANARES, "Las Conferencias episcopales en el nuevo Código de derecho canónico," in *Raccolta di scritti in onore di Pio Fedele,* I (Perugia 1984), p. 530; regarding the activity developed in the conferences, cf. J.T. MARTÍN DE AGAR, *Legislazione delle conferenze episcopali complementare al C.I.C.* (Milan 1990). For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

Nevertheless, the possibility must not be excluded that in the near future this situation could evolve positively, at least at the level of pontifical particular law. In effect, it is meaningful that some concordat agreements signed by John Paul II attributed to the Conferences of the respective countries normative competences in subjects of notable importance for the life of the Church and for civil society.[7]

2. *The methods of exercising the normative function*

The exercise of normative power by the Conferences finds notable limits also from other points of view. In the first place, it is the exclusive competence of the plenary assembly, and can in no way be delegated to other bodies.[8] A clear affirmation of the central and irreplaceable role of the plenary assembly can be found in this "reservation," so as to avert the danger that, due to the difficulty of gathering together the entire episcopate and for the urgency of providing a discipline on some subjects, the legislative functions would in fact come to be concentrated in the hands of a few bishops, who would find no difficulty in determining all the activity of the Conference.

It is required, moreover, that the juridically binding decisions be based on a wide consensus since not only is a two-thirds majority required (as it happens in other deliberations of the greatest importance, like the election of the Pontiff or the documents of Vatican II), but also that the *quorum* be computed not on the number of voters, but on the number of members of the Conference with a deliberative vote, with the consequence that null votes, abstentions, and absences themselves end up being votes in contra. It should be noted that, "given the proper nature of the bishops' conference, one of its members could not delegate his functions to another." Nevertheless, in Conferences "consisting of a small number of members," the statutes may provide "as an exception to that provision, [for] delegation to a bishop who is a member of the Conference, or also to the Vicar general of the diocese, but only to communicate the opinion of the principal." Therefore, under no circumstances would the representative "have the right to vote in the name of the principal when it is a matter of binding legislative norms," as well as in the case of doctrinal statements, which we will discuss shortly.[9]

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7. Cf. G. FELICIANI, "Prospettive di sviluppo del diritto particolare ad opera delle Conferenze episcopali," in *Folia canonica* 2 (1999), pp. 23–31.

8. The delegation of that power to the commissions was already explicitly excluded by the Central Commission for the coordination of postconciliary work in its reply *Utrum potestas*, June 10, 1966, in *AAS* 60 (1968), p. 361.

9. Litt. *La Congregazione per i Vescovi*, no. 6.

Finally, it was envisioned that the general decrees, once approved in the plenary assembly, would obtain the *recognitio* of the Holy See,[10] in conformity with provisions already established some time ago for particular councils (cf. c. 446). The conciliar provision received in this disposition of the Code had led to notable doctrinal divergences: while some considered that the recognitio was required *ad validitatem*, others considered it necessary only *ad liceitatem*. Canon 455 § 2 resolves the issue by establishing that the decisions of the Conference lack the coercive power if they have not been lawfully promulgated, and by expressly indicating the *recognitio* as a requirement for lawfulness.

On the other hand, this step does not transform the decisions of the Conference into pontifical acts. It does not have, in effect, the function of conferring binding force or greater authority on the decisions, but only that of permitting the Holy See to confirm that they do not contain anything contrary to the good of the Church, or less consonant with it, and in particular nothing contrary to the unity of the faith and communion. Specifically, the *recognitio* is granted within the scope of their respective competences by the congregations for the Eastern Churches, for bishops, and for the evangelization of peoples, after having submitted the decisions of the Conferences to the examination of the PCILT and having consulted the other dicasteries of the Roman Curia interested *ratione materiae*.[11]

The determination of the methods of promulgation and of duration of the *vacatio* are left entirely to the bishops' conference by canon 455 § 3. Hence it can be deduced that the Conference could establish, for all its general decrees which do not provide otherwise, a period of *vacatio* different from that envisioned by canon 8 § 2 for particular laws.

So that this exposition is complete, we must remember that the various canons of the Code attributed functions of an administrative kind to the Conference referring to particular cases, which can imply the issuance of singular decrees (cf. c. 48).[12] The respective decisions, since they are not general decrees, are not subject to the norms of canon 455, and consequently they are adopted, in the absence of specific statutory dispositions, pursuant to canon 119. They do not require, unless it is otherwise established, the *recognitio* of the Holy See.[13] Otherwise, the Code Commission refused expressly to assign the Conference tasks of an administrative na-

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10. For this institution, cf. J. MANZANARES, "En torno a la 'reservatio papalis' y la 'recognitio,'" in *Iglesias locales y catolicidad. Actas del Coloquio Internacional celebrado en Salamanca, 2–7 de Abril de 1991* (Salamanca 1992), pp. 329–361.

11. Cf. *PB* 58 § 1, 82, 89, 157.

12. Cf. *Codex iuris canonici fontium annotatione...*, cit., p. 553, "Conferentia Episcoporum—aliae competentiae."

13. Cf. P. KRÄMER, "Las conferencias episcopales la Santa Sede," in *Naturaleza y futuro de las conferencias episcopales. Actas del Coloquio Internacional de Salamanca (3–8 de enero de 1988)*, Salamanca 1988, pp. 167–181.

ture that could foster the creation of a kind of national curia which was considered absolutely inopportune.[14]

3. *The problem of doctrinal authority*

The Conferences carry out a function of great importance also in the areas where they do not exercise legislative power since, as John Paul II has emphasized, they are intended to confront the issues that arise in the lives of people and society, keeping God in mind and not neglecting to treat opportunely and securely the problems proper to the life of the Church. To the Conferences, in effect, falls the function of representing in the most genuine way the episcopate before the other institutions, not only ecclesial, but civil as well.[15]

In this respect, it appears significant that mp *Apostolos suos*, no. 15, at exactly the same time that it recognizes that "it is not possible to give an exhaustive list of the issues which require such cooperation [by the bishops]," specifically mentions among the issues that currently call for the action of Conferences "relations with civil authorities, the defense of human life, of peace, and of human rights, also in order to ensure their protection in civil legislation, the promotion of social justice."

In the exercise of such a broad ambit of competences and responsibilities, it is inevitable that the Conferences be concerned with the doctrinal orientation of the faithful, as well; and in fact, they always have. In this regard, the mp *Apostolos suos* acknowledges that "the joint exercise of the episcopal ministry also involves the teaching office," as otherwise provided in the "fundamental norm" of canon 753. It then notes that in this area the pronouncements of the Conferences should be kept within precise limits, because "while being official and authentic and in communion with the Apostolic See, these pronouncements do not have the characteristics of a universal magisterium." Lastly, it specifies that, "in order that the doctrinal declarations of the Conference of Bishops ... may constitute authentic magisterium and be published in the name of the Conference itself, they must be unanimously approved by the bishops who are members, or receive the *recognitio* of the Apostolic See if approved in plenary assembly by at least two thirds of the bishops belonging to the Conference and having a deliberative vote."[16]

These procedural provisions deserve particular attention because they introduce a new "criterion for distinguishing among the members by law" and, therefore, "represent an innovation worth stressing in the way of

14. Cf. *Comm.* 15 (1983), p. 84.
15. Cf. *Ai vescovi del Brasile*, July 10, 1980, in *Insegnamenti di Giovanni Paolo II*, III, 2 (Vatican City 1979ff), pp. 217 and 222.
16. Cf. Litt. *Apostolos suos*, nos. 21–22 and IV, art. 1.

conceiving, speaking as a whole, the bishops' conferences." Unanimity requires, in fact, only "the bishop members, excluding from the count ... other possible members by law of the Conference," such as the diocesan administrators and the prelates who preside over a particular church assimiliated to the diocese (cf. c. 368) if they do not have episcopal status. Then this favors the auxiliary bishop "who is not primarily responsible for the pastoral guidance of a community" over "the one who is immediately guiding a portion of the people of God." Moreover, it allows for the vote of an auxiliary bishop, albeit deprived of a deliberative vote, to prevent unanimous approval of a declaration on which all the diocesan bishops agreed.[17]

In any case, it should be stressed that the specific methods that have been observed by the Conferences in exercising their doctrinal function were not always exempt from criticism. In several countries the collective documents became excessively frequent and tiresome. They frequently faced subjects of great sensitivity to public opinion, not susceptible to unanimous assessments. Some episcopates, moreover, adopted very controversial procedures in drafting the texts, by publishing preparatory drafts and soliciting suggestion from the faithful. Besides this, some positions were interpreted as contrary to pontifical teaching, or at least directed toward going beyond its scope. Frequently added to this was the fact that even mere commissions published documents, without clear validity or authority.

In order to remedy these problems, the Holy See, in addition to demanding the *recognitio*,[18] has provided that only those declarations "can be submitted to a vote in which the bishops, meeting at a Conference, believe that they must tackle new issues and in this way make the message of Christ illuminate and guide the consciences of men to provide a solution for new problems that arise with social changes," always seeking "to follow the magisterium of the universal Church," as provided in the mp *Ad tuendam fidem*.[19]

It is also noted that "no body of the Bishops' conference, outside of the plenary assembly, has the power to carry out acts of authentic magisterium," and that eventual pronouncements by the doctrinal Commission not only will necessarily lack that character, but must be expressly autho-

17. Cf. J.I. ARRIETA, Le conferenze episcopali nel motu proprio 'Apostolos suos," in *Ius Ecclesiae* 11 (1999), pp. 181–182.

18. As noted in the mp *Apostolos suos*, no. 22, that intervention is "analogous"to what is required for general decrees and "serves furthermore to guarantee that, in dealing with new questions posed by the accelerated social and cultural changes characteristic of present times, the doctrinal response will favour communion and not harm it, and will rather prepare an eventual intervention of the universal magisterium." For the competent dicasteries in this area, cf. Litt. *La Congregaziones per I Vescovi*, no. 4.

19. Cf. mp *Apostolos suos*, nos. 21 and 22. Cf. also Litt. *La Congregazione per i Vescovi*, no. 1.

rized by the permanent Council.[20] And with respect to the episcopal commissions in general, there is a desire to reduce the number of documents, "in order to avoid their excessive proliferation, as well as due to the difficulty, noted extensively, in establishing their degree of authority."[21] Lastly, we should note the invitation to carefully avoid "interfering with the doctrinal work of the bishops of other territories, bearing in mind the wider, even world-wide, resonance which the means of social communication give to the events of a particular region."[22]

4. *The safeguarding of diocesan autonomy*

The disposition of § 4—which proposes the evident goal of safeguarding personal responsibility and the autonomy of each one of the diocesan bishops—can be considered without a doubt as a specification of the traditional principle reaffirmed by canon 119 § 3: "*Quod autem omnes uti singulos tangit, ab omnibus approbari debet.*" Therefore, it would seem to be an absolutely obvious disposition, but in reality it presents important interpretive problems.

In effect, it must be asked if the Conference can publish a document of a nature different from that of the general decrees only when it is agreed upon by all its members. In favor of this thesis it could be maintained that the legislator has considered necessary a participation of the Conference exclusively in the subject that have been legislatively attributed to them. Consequently, any position in other fields would be lawful only if it were approved by unanimous vote.

This argument deserves close attention, but even this will not obviate every problem. On the one hand, it seems truly remarkable that nonbinding juridical deliberations require a majority much more qualified than those required by decisions endowed of legislative validity. On the other, the preexisting regulations do not seem to support an interpretation like the one described. In effect, the Directory *Ecclesiae imago*, of the Congregation for Bishops, not only does not prohibit the publication of documents different from the general decrees even with some bishops dissented, but that, on the contrary, it considers that the latter have a certain moral obligation to follow the orientation expressed by the majority.[23] And to this must be added that the *Instrumentum laboris* regarding the theological and juridical statute of the bishops' conferences considered it

20. Cf. mp *Apostolos suos*, IV, arts. 203.
21. Litt. *La Congregazione per i Vescovi*, no. 10.
22. MP *Apostolos suos*, no. 22.
23. Cf. *DPMB*, 212, b).

"too paralyzing" to demand moral unanimity for the publication of documents of a doctrinal nature.[24]

It seems better to consider that in the absence of unanimous approval, the document can be published, but with the specific direction that it is agreed upon by only part of the episcopate, and, after having carefully assessed the pastoral appropriateness of letting everyone know of the existence of diverging opinions among the bishops.

24. Cf. SCB, *Instrumentum laboris*, cit., p. 1302.

456 **Absoluto conventu plenario Episcoporum conferentiae, relatio de actis conferentiae necnon eius decreta a praeside ad Apostolicam Sedem transmittantur, tum ut in eiusdem notitiam acta perferantur, tum ut decreta, si quae sint, ab eadem recognosci possint.**

When a plenary meeting of the Bishops' conference has been concluded, its minutes are to be sent by the president to the Apostolic See for information, and its decrees, if any, for review.

SOURCES: *LG* nep 2; *CD* 38, 4

CROSS REFERENCES: —

COMMENTARY

Giorgio Feliciani

The obligation to send all the minutes of the plenary assembly to the Holy See was not contemplated in the conciliar *Christus Dominus*, but it had been established already several years before the promulgation of the Code by the mp *Sollicitudo omnium Ecclesiarum* VIII. There it was foreseen that the pontifical legate would receive a copy of the proceedings of the assembly so as to become informed of them and to transmit them to the Holy See.

The reasons giving rise to this disposition are various. In the first place, it is evident that knowledge of the minutes of the Conference in their entirety allows the Holy See to understand clearly and deeply the Church's situation in a country and to intervene, if necessary, with suggestions and directives, especially regarding matters that, being important to several nations, require a common orientation on the part of different episcopates. One can recall, for example, the *meeting* of the representatives of the European and North American episcopates, which took place at the Vatican in January 1983, to assess the position that had to be taken on the public pronouncements regarding disarmament.[1]

Moreover, it must be observed that the need to inform the Holy See without delay of the adopted decisions does not refer only to the juridically binding decisions, since after the Council the bishops' conferences were converted into a privileged instrument for organic collaboration between the Pontiff and the bishops that the doctrine of collegiality urged.

1. Cf. the overview published in *30 giorni* 1 (1983), no. 3, pp. 41–48.

From this new perspective, the Code expressly envisions the opinion or proposal of the interested Conferences for various measures of the Holy See, like the establishment of personal prelatures (c. 294), non-territorial particular churches (c. 372 § 2), for the appointment of bishops (c. 377 §§ 2–3), or the creation of ecclesiastical regions (c. 433 § 1). It is a consultative function that refers not only to matters of local interest, in a manner of speaking, but also to problems of great importance for the universal Church. In effect, the rules of the Synod of Bishops call on each Conference to formulate, after a thorough study, its own opinion about items on the agenda, and to entrust its expression to those of its members who will participate in the assemblies of the synod.[2] Moreover, the Apostolic Constitution *Pastor bonus*, in article 26, commends to the dicasteries of the Roman Curia the fostering of frequent relations with the Conferences of Bishops, by asking for their opinions in the preparation of the most important documents of a general character or that specifically affect their territories.

2. Cf. OS (1969), art. 23.

457 **Consilii Episcoporum permanentis est curae, ut res in plenario conventu conferentiae agendae praeparentur et decisiones in conventu plenario statutae debite executioni mandentur; eiusdem etiam est alia negotia peragere, quae ipsi ad normam statutorum committuntur.**

The permanent committee of bishops is to prepare the agenda for the plenary meetings of the Conference, and it is to ensure that the decisions taken at those meetings are duly executed. It is also to conduct whatever other business is entrusted to it in accordance with the statutes.

SOURCES: *CD* 38, 3

CROSS REFERENCES: —

COMMENTARY

Giorgio Feliciani

The permanent committee has the mission of assuring, in the periods between the various plenary assemblies, that close collaboration among the bishops which constitutes the institutional end of the Conference. More specifically, this body—pursuant to the provisions in the statutes—must guarantee the continuity of the activities undertaken, must prepare for the plenary assembly, concern itself with the execution of its decisions, direct the general secretariat, coordinate the activity of the commissions, and supervise the administration of the Conference's resources.

The statutes envision guarantees of various types against the possibility that the committee exceed its functions, transforming itself into an oligarchy that undermines in fact the plenary assembly. This is not just theoretical, since it can be supported by the desire for a more rapid and incisive action and by the confidence of the bishops in their most capable and meritorious colleagues. Thus many statutes envision the election for a fixed time, and some go beyond, since they require that this kind of assignment not be conferred on the same persons for more than two successive periods. The advisability of this last provision is, nevertheless, very controversial, since the obligatory rotation does not totally exclude the risk of episcopal oligarchies, which could exercise their power to get around the problem, and in contrast it necessarily involves a grave limitation of the freedom of the plenary assembly in designations of the highest importance for the life of the Conference. For the same reason, and *a fortiori*,

the statutes that provide for the participation of non-elective members in the committee can also be criticized.

In any case, the problem of endowing this body with a composition that responds to the functions does not seem to have an easy solution, since—besides keeping in mind the factors that vary from one country to another—it is necessary to combine different needs. In effect, a broadly representative character of the committee, even though it avoids concentration of functions in the hands of a few persons, in turn inevitably involves the reinforcement of its authority, which can result in the lessening of the authority of the assembly. In general, to foster effective coordination of all the activities of the Conference, the presidents of the various permanent bodies participate in the committee, to which are frequently added other members chosen for that function by the assembly or by the provincial and regional episcopates.

Although the statutes try to delimit clearly the competence of the committee—defined as an executive body, with delegated powers that have to be exercised within statutory boundaries and in conformity with the directives of the assembly—its tasks are generally very broad, especially when it is charged with the responsibility of confronting problems of an urgent nature, adopting opportune measures, and issuing, if it is proper, public declarations. In those cases the committee can find itself in a situation of deciding the gravest of issues, which profoundly influence the life of the country, putting itself, though provisionally, in the place of the plenary assembly, which, afterwards, will not be able to disavow the declarations of the committee without creating a crisis of authority and credibility for the entire episcopate.

In any case, it must be observed that the relations between the plenary assembly and the permanent committee are not presented everywhere in the same terms, since the breadth of power that the latter is developed in direct proportion to the number of members of the Conference. In effect, it is evident that where the ordinary assemblies are very frequent and the extraordinary assemblies are easily convened, room for activity by the committee that does not merely execute the decisions of the entire episcopate is necessarily very restricted. Thus, while in the Conferences composed of few members there is no committee, or one reduced to the bare essentials, both in is composition and functions, in the larger Conferences, the committee possesses a structure so complex and a sum of functions so important that some of them are entrusted to more restricted bodies (e.g., the council of presidency) to assure their timely performance.

458 **Secretariae generalis est:**

1° relationem componere actorum et decretorum conventus plenarii conferentiae necnon actorum consilii Episcoporum permanentis, et eadem cum omnibus conferentiae praeside aut a consilio permanenti componenda committuntur;

2° communicare cum Episcoporum conferentiis finitimis acta et documenta quae a conferentia in plenario conventu aut a consilio Episcoporum permanenti ipsis transmitti statuuntur.

The general secretariat is to:

1° prepare an account of the acts and decrees of the plenary meetings of the Conference, as well as the acts of the permanent committee of bishops, and to communicate these to all members of the Conference and likewise to record whatever other acts are entrusted to it by the president or the permanent committee;

2° to communicate to neighbouring Bishops' conferences such acts and documents as the Conference at a plenary meeting or the permanent committee of bishops decides to send to them.

SOURCES: 1°: *CD* 38, 3; *ES* I, 41 § 5
2°: *ES* I, 41 § 5

CROSS REFERENCES: —

COMMENTARY

Giorgio Feliciani

As a general rule, the function of the general secretariat is clearly and expressly subordinated in the statutes to those of the president and the permanent committee. Its responsibility is conferred on a single person (cf. c. 452 § 1), who is not necessarily a member of the Conference, and who has several tasks of a technical character, since he must organize and assure all the services indispensable for a beneficial and orderly realization of the activity of the Conference. In particular, in accordance with the provisions of the statutes, besides those of canon 458, he ensures communications of every kind, procures the appropriate reports, guarantees the connection between the commissions, fosters relations with the other Conferences, and is in charge of the archives.

The creation of this figure is indispensable, since a collegial institution cannot handle functions of a continued nature (like those proper to the Conference) without creating a stable structure. These functions can be guaranteed neither by the permanent committee—which only acts when its members are consulted and makes common decisions—nor by the president, upon whom other grave responsibilities can fall, like the governance of a diocese, frequently of great proportions.

The ordinary activity of the Conference is entrusted, therefore, to the secretary-general, to whom at times is attributed even specific functions. In any case, the statutes very clearly exclude his having any power of decision, and affirm, in clear terms, his absolute dependence on a permanent committee, which varies in each Conference according to the diversity of the situations and local traditions, and which, specifically, can be the president, the committee, or also—rarely—the bishop-secretary of the Conference, so long as the latter has functions different from those of the secretary-general.

Generally speaking, therefore, one can affirm that the general secretariat, though having an essential role, does not present grave problems in relation to other parts of the Conference, given its clearly subordinate position. The only serious danger would be that the secretariat become excessively bureaucratic, which would negatively affect the entire life of the Conference. But a problem of that kind would be imputable, rather than to the secretariat itself, to the offices charged with directing and controlling its activity, revealing their inadequacy in performing their functions.

459 **§ 1. Foveantur relationes inter Episcoporum conferentias, praesertim viciniores, ad maius bonum promovendum ac tuendum.**

§ 2. Quoties vero actiones aut rationes a conferentiis ineuntur formam internationalem praeseferentes, Apostolica Sedes audiatur oportet.

§ 1. Relations are to be fostered between Bishops' conferences, especially neighbouring ones, in order to promote and defend whatever is for the greater good.

§ 2. However, the Apostolic See must be consulted whenever actions or matters undertaken by Conferences have an international character.

SOURCES: § 1: *CD* 38, 5; *ES* I, 41 § 5; Syn. Bish. Nunc nobis, 27 oct. 1969
§ 2: *ES* I, 41 § 4

CROSS REFERENCES: —

COMMENTARY

Giorgio Feliciani

The provisions of this canon, while small in substance, treat in the most generic terms a problem of notable importance.

Collaboration between the Conferences, since they constitute a subsequent and broader manifestation of the communion between churches, fosters the overcoming, on the part of the episcopates, of possible temptations to particularism. This cooperation is developed with indispensable frequency, even from a practical and immediate point of view, to respond to the pastoral needs that are important to territories larger that those of individual countries. Thus, it is easily understood that such collaboration has been structured not only in occasional forms, but also in organic forms, through the creation of organizations for that end on an international and even a continental level. In the judgment of the International Theological Commission,[1] these assemblies proposed in our time, and characterized by "the unification and organization of large geopolitical areas," "a specific future of the unity of the Church in the diversity of cultures and of human situations."

1. "Themata selecta de ecclesiologia," October 7, 1985, no. 5.3, in *Enchiridion Vaticanum*, IX (Bologna 1966ff) pp. 1672–1675.

Presently there exist eight international meetings of African Conferences; two federations that unite, respectively, the Conferences of Asia and Oceania; a Latin American Episcopal Council; an episcopal secretariat for Central America and Panama; and two organizations for the European continent. The first of the latter (Council of the European Bishops' conferences: C.C.E.E.) unites the episcopates of the East and the West, while the second (Commission of the Episcopate of the European Community: COM.E.C.E.), which was recently instituted, assures a connection between the bishops of the member countries of the European Community.[2]

These organizations must not be confused with the international bishops' conferences, which are instituted where suitable conditions for the creation of national Conferences do not exist (cf. commentary on c. 448).

In effect, the international groups, federations, councils, secretariats, or commissions recalled above are not composed of individual bishops, but of entire Conferences. Moreover, they do not have the power to perform legislative acts or acts of authentic magisterium[3] because their function is limited to guaranteeing collaboration among episcopates that form a part of them.

Such collaboration is more and more necessary due to the dimension assumed by pastoral problems of the contemporary world and, therefore, it is foreseeable that it will reach a subsequent increase and development.

In this perspective it is necessary to carefully assess the case of the importance of attributing legislative power in certain areas to the assembles that unite the bishops of several Conferences—like the general conferences of the Latin American episcopate that was celebrated in Rio de Janeiro, Medellín, Puebla, and Santo Domingo, respectively, in 1955, 1968, 1979, and 1992.

On the one hand, it is evident that problems can be presented at the international and continental level that also require a common juridical regulation. On the other hand, it is necessary to avoid to the extent possible the multiplication of intermediate hierarchical instances between the Holy See and each one of the bishops. In effect, that plurality of instances, although not contrary to the divine constitution of the Church, would present delicate problems of safeguarding Catholic unity and of protecting the lawful autonomy of the various Conferences and of the diocesan bishops themselves.

2. Cf. *l'Annuario Pontificio* (2003), pp. 1021–1024.

3. Cf. Litt. *La Congregazione per i Vescovi*, no. 5, where it is warned: "*Nell'eventualità che si ritenesse necessaria un'azione 'in solidum' di più Conferenze, essa dovrebbe essere autorizzata dalla Santa Sede, che nei singoli casi indicherà le necessarie norme da osservare.*"

In this sense the Synod of Bishops of 1969 has expressed itself very clearly that, since recommending the gradual establishment of relations among the bordering Conferences or those characterized by common sociocultural conditions, even including associative forms in the continental context, it is decidedly opposed to the possible transformation of such associations into "super-conferences" endowed of juridical powers.[4] Analogously, John Paul II[5] has emphasized that the regional and continental instances cannot supplant the authority of the Conferences and of each of the bishops in the decision-making process, and must in any case place its action in the framework of the orientations established by the Holy See by acting in close relationship with the successor of Peter.

Moreover, it must be observed that in case it is absolutely indispensable to establish a common legislation on certain subjects for several countries or for an entire continent, the problem could be resolved by convening the appropriate councils. Indeed, there is no lack of examples of particular councils that have affected very large territories (recall especially the Latin American Council held in 1899 at the behest of Leo XIII). Synods of bishops of a continental character have been frequently convened in recent years.[6] These assemblies lack legislative powers, but they can have them as a consequence of the promulgation of pontifical laws for the interested continents, based on the indications and proposals contributed in the assembly of the synod.

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4. Cf. G. CAPRILE, *Il Sinodo dei Vescovi. Prima assemblea straordinaria* (Rome 1970), pp. 271–272.

5. Cf. the speech directed to the C.C.E.E. on December 19, 1978, no. 1, in *Insegnamenti di Giovanni Paolo II*, I (Vatican City 1979ff), p. 365.

6. As it is known, there have already been Synods held for Europe and Africa, and JOHN PAUL II has called for the fourth general conference of Latin-American Bishops in order to "examine the possibility that, in the not too distant future, a gathering, which also may have the character of a synod, might be held with representatives of the episcopal sees of the entire American continent." (*L'Osservatore Romano*, October 14, 1992, p. 7, no. 17).